STATUTORY INSTRUMENTS

2014 No. 1530

EDUCATION

The Special Educational Needs and Disability Regulations 2014

Made - - - -	*4th June 2014*
Laid before Parliament	*11th June 2014*
Coming into force - -	*1st September 2014*

The Secretary of State makes the following Regulations, in exercise of the powers conferred by sections 30(8) and(9), 34(6), 36(11), 37(4), 41(5), 44(7), 45(5), 46(2), 47(1) and (2), 51(4), 56(1), 67(3), 69(3)(a), and 80(1) of the Children and Families Act 2014(**a**):

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Special Educational Needs and Disability Regulations 2014 and come into force on 1st September 2014.

Interpretation

2.—(1) In these Regulations(**b**)—

"the Act" means the Children and Families Act 2014;

"the appropriate authority" means—

(a) in relation to a community, foundation or voluntary school(**c**) or a maintained nursery school(**d**), the governing body of the school; and

(b) in relation to an Academy school(**e**), the proprietor;

"educational institution" means a school or post-16 institution;

"health care professional" means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(**f**);

(**a**) 2014 c.6
(**b**) The definitions in the Act are applied throughout these Regulations.
(**c**) Community, foundation and voluntary school have the same meaning as in section 20 of the School Standards and Framework Act 1998 (c.31) ("the 1998 Act")
(**d**) Maintained nursery school has the meaning given by section 22(9) of the 1998 Act
(**e**) Academy school has the meaning given in section 1A of the Academies Act 2010 (c.32). Section 1A was inserted by section 53(7) of the Education Act 2011 (c.21) ("the 2011 Act")
(**f**) 2002 c.17

"infant school" means a primary school for the purpose of providing education for children who are of compulsory school age but have not attained the age of eight, even though it may also provide education for children below compulsory school age;

"junior school" means a primary school for the purpose of providing education for children who are of compulsory school age who have attained the age of eight;

"relevant school" means a mainstream school or a maintained nursery school;

"responsible commissioning body" has the meaning given in section 42(4) of the Act;

"the SENCO", in relation to a relevant school, means the person who has been designated to be the special educational needs co-ordinator for the school by the appropriate authority in accordance with section 67 of the Act;

"transfer between phases of education" means a transfer from—

(a) relevant early years education to school;

(b) infant school to junior school;

(c) primary school to middle school;

(d) primary school to secondary school;

(e) middle school to secondary school; or

(f) secondary school(**a**) to a post-16 institution;

"year 9" means the year of compulsory schooling in which the majority of pupils in the class attain the age of 14.

(2) Preparation for adulthood and independent living includes preparation relating to—

(a) finding employment;

(b) obtaining accommodation;

(c) participation in society.

PART 2

Children and young people with special educational needs

Assessments

Consideration of request

3. A local authority must consult the child's parent or the young person as soon as practicable after—

(a) receiving a request for an EHC needs assessment under section 36(1) of the Act, or

(b) becoming responsible for the child or young person in accordance with section 24 of the Act,

before determining whether it may be necessary for special educational provision to be made in accordance with an EHC plan for the child or young person.

Determination whether or not special educational provision may be necessary

4.—(1) Where a local authority determines that it is not necessary for special educational provision to be made in accordance with an EHC plan it must notify the child's parent or the young person in accordance with section 36(5) of the Act as soon as practicable, but in any event within 6 weeks of—

(**a**) Primary school, middle school and secondary school have the meaning in section 5 of the Education Act 1996 (c.56) ("the 1996 Act").

(a) receiving a request for an EHC needs assessment under section 36(1) of the Act, or

(b) becoming responsible for the child or young person in accordance with section 24 of the Act.

(2) Where the local authority is considering securing an EHC needs assessment it must also notify—

(a) the responsible commissioning body;

(b) the officers of the local authority who exercise the local authority's social services functions for children or young people with special educational needs;

(c) in relation to a child—

(i) if the child is a registered pupil(**a**) at a school, the head teacher of that school (or the person holding the equivalent position), or

(ii) if the child receives education from a provider of relevant early years education, the person identified as having responsibility for special educational needs (if any) in relation to that provider; and

(d) in relation to 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, to the principal of that institution (or the person holding the equivalent position).

Decision whether or not to conduct an EHC needs assessment

5.—(1) The local authority must notify the child's parent or the young person as soon as practicable and in any event within 6 weeks of—

(a) receiving a request for an assessment under section 36(1) of the Act, or

(b) becoming responsible for the child or young person in accordance with section 24 of the Act

of its decision whether or not it is necessary to secure an EHC needs assessment for the child or young person.

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

(3) When notifying the child's parent or the young person of its decision that it is not necessary to secure an EHC needs assessment for the child or young person, 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 32; and

(d) the availability of—

(i) disagreement resolution services; and

(ii) information and advice about matters relating to the special educational needs of children and young people.

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

(a) the local authority has requested advice from the head teacher or principal of a school or post-16 institution 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;

(**a**) Pupil has the meaning in section 3 of the 1996 Act

(b) the authority has requested advice from the person identified as having responsibility for special educational needs (if any), in relation to, or other person responsible for, a child's education at a provider of relevant early years education during a period beginning one week before any date on which that provider 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;

(c) exceptional personal circumstances affect the child, the child's parent, or the young person during the time period referred to in paragraph (1); or

(d) the child, the child's parent, or the young person, are 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 of EHC Needs Assessments

6.—(1) Where the local authority secures an EHC needs assessment for a child or young person, it must seek the following advice and information, on the needs of the child or young person, and what provision may be required to meet such needs and the outcomes that are intended to be achieved by the child or young person receiving that provision—

(a) advice and information from the child's parent or the young person;

(b) educational advice and information—

(i) from the head teacher or principal of the school or post-16 or other institution that the child or young person is attending, or

(ii) where this is not available, from a person who the local 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 child or young person is not currently attending a school or post-16 or other institution and advice cannot be obtained under sub-paragraph (ii), from a person responsible for educational provision for the child or young person, and

(iv) if any parent of the child or young 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 responsible 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 any other person the local authority thinks is appropriate;

(g) where the child or young person is in or beyond year 9, advice and information in relation to provision to assist the child or young person in preparation for adulthood and independent living; and

(h) advice and information from any person the child's parent or young person reasonably requests that the local authority seek advice from.

(2) Where it appears to the authority, in consequence of medical advice or otherwise, that the child or young 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 shall be advice given after consultation with a person who is so qualified.

(3) When seeking advice in accordance with paragraph (1)(b) to (h), the local authority must provide the person from whom advice is being sought with copies of—

(a) any representations made by the child's parent or the young person, and

(b) any evidence submitted by or at the request of the child's parent or the young person.

(4) The local authority must not seek any of the advice referred to in paragraphs (1)(b) to (h) if such advice has previously been provided for any purpose and the person providing that advice, the local authority and the child's parent or the young person are satisfied that it is sufficient for the purposes of an EHC needs assessment.

Matters to be taken into account in securing an EHC needs assessment

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

(a) consult the child and the child's parent, or the young person and take into account their views, wishes and feelings;

(b) consider any information provided to the local authority by or at the request of the child, the child's parent or the young person;

(c) consider the information and advice obtained in accordance with regulation 6(1);

(d) engage the child and the child's parent, or the young person and ensure they are able to participate in decisions; and

(e) minimise disruption for the child, the child's parent, the young person and their family.

Duty to co-operate in EHC needs assessments

8.—(1) Where a local authority requests the co-operation of a body in securing an 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 child, the child's parent or the young person during that 6 week period;

(b) the child, the child's parent or the young person are absent from the area of the authority for a continuous period of not less than 4 weeks during that 6 week period; or

(c) the child or young 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 parents and young people

9. When securing an EHC needs assessment the local authority must consider whether the child's parent or the young person requires any information, advice and support in order to enable them to take part effectively in the EHC needs 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 an EHC needs assessment, a local authority decides that it is not necessary for special educational provision to be made for a child or young person in accordance with an EHC plan, the notification given in accordance with section 36(9) must be given as soon as practicable, and in any event within 16 weeks of the local authority receiving a request for an EHC needs assessment in accordance with section 36(1) of the Act, or of the local authority becoming responsible for the child or young person in accordance with section 24 of the Act.

(2) It must also notify the responsible commissioning body and the person notified in accordance with regulation 4(2)(c) or (d).

(3) When notifying a child's parent or young person in accordance with paragraph (1) the local 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 32; and

(d) the availability of—

(i) disagreement resolution services; and

(ii) information and advice about matters relating to the special educational needs of children and young people.

(4) The local 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 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) the authority has requested advice from the person identified as having responsibility for special educational needs (if any) in relation to, or other person responsible for, a child's education at a provider of relevant early years education during a period beginning one week before any date on which that provider 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;

(c) exceptional personal circumstances affect the child or the child's parent, or the young person during that time period ; or

(d) the child or the child's parent, or the young person, are 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

11. When preparing a child or young person's EHC Plan a local authority must—

(a) take into account the evidence received when securing the EHC needs assessment; and

(b) consider how best to achieve the outcomes to be sought for the child or young person.

Form of EHC plan

12.—(1) When preparing an EHC plan a local authority must set out—

(a) the views, interests and aspirations of the child and his parents or the young person (section A);

(b) the child or young person's special educational needs (section B);

(c) the child or young person's health care needs which relate to their special educational needs (section C);

(d) the child or young person's social care needs which relate to their special educational needs or to a disability (section D);

(e) the outcomes sought for him or her (section E);

(f) the special educational provision required by the child or young person (section F);

(g) any health care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs (section G);

(h) (i) any social care provision which must be made for the child or young person as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970(**a**) (section H1);

(**a**) 1970 c.44

(ii) any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs (section H2);

(i) the name of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person 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 child or young person (section I); and

(j) where any special educational provision is to be secured by a direct payment, 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 responsible commissioning body.

(3) Where the child or young person is in or beyond year 9, the EHC plan must include within the special educational provision, health care provision and social care provision specified, provision to assist the child or young person in preparation for adulthood and independent living.

(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 local authority sends a draft plan to a child's parent or young 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 local authority to arrange a meeting between them and an officer of the local 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 child or young person to attend.

(2) A local authority must send the finalised EHC plan to—

(a) the child's parent or to the young person;

(b) the governing body, proprietor or principal of any school, other institution or provider of relevant early years education named in the EHC plan; and

(c) to the responsible commissioning body,

as soon as practicable, and in any event within 20 weeks of the local authority receiving a request for an EHC needs assessment in accordance with section 36(1) of the Act, or of the local authority becoming responsible for the child in accordance with section 24 of the Act.

(3) The local 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 (d)

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 child's parent or the young person in accordance with section 39(8)(a) or 40(5)(a) of the Act, the local authority must notify them of—

(a) their right to appeal matters within the EHC plan in accordance with section 51(2)(c) of the Act;

(b) the time limits for doing so;

(c) the information concerning mediation, set out in regulation 32; and

(d) the availability of—

(i) disagreement resolution services; and

(ii) advice and information about matters relating to the special educational needs of children and young people.

Transfer of EHC plans

15.—(1) This regulation applies where a child or young person in respect of whom an EHC plan is maintained moves from the area of the local authority which maintains the EHC plan ("the old authority") into the area of another local authority ("the new authority").

(2) The old authority shall transfer the EHC plan to the new authority ("the transfer") on the day of the move or, where it has not become aware of the move at least 15 working days prior to that move, within 15 working days beginning with the day on which it did become aware.

(3) From the date of the transfer—

(a) the EHC plan is to be treated as if it had been made by the new authority on the date on which it was made by the old authority and must be maintained by the new authority; and

(b) where the new authority makes an EHC needs assessment and the old authority has supplied the new authority with advice obtained in pursuance of the previous assessment the new authority must not seek further advice where the person providing that advice, the old authority and the child's parent or the young person are satisfied that the advice obtained in pursuance of the previous assessment is sufficient for the purpose of the new authority arriving at a satisfactory assessment.

(4) The new authority must, within 6 weeks of the date of the transfer, inform the child's parent or the young person of the following—

(a) that the EHC plan has been transferred;

(b) whether it proposes to make an EHC needs assessment; and

(c) when it proposes to review the EHC plan in accordance with paragraph (5).

(5) The new authority must review the EHC plan in accordance with section 44 of the Act before the expiry of the later of—

(a) the period of 12 months beginning with the date of making of the EHC plan, or as the case may be, with the previous review, or

(b) the period of 3 months beginning with the date of the transfer.

(6) Where, by virtue of the transfer, the new authority comes under a duty to arrange the child or young person's attendance at a school or other institution specified in the EHC plan but in the light of the child or young person's move that attendance is no longer practicable, the new authority must arrange for the child or young person's attendance at another school or other institution appropriate for him or her until such time as it is possible to amend the EHC plan.

(7) Where, by virtue of the child or young person's move, another commissioning body becomes the responsible commissioning body for that child or young person, the original responsible commissioning body must notify the new responsible commissioning body of the move on the day of the move or where it has not become aware of the move at least 15 working days prior to that move, within 15 working days beginning on the day on which it did become aware.

(8) Where it is not practicable for that new commissioning body to arrange the health care provision specified in the EHC plan, it must, within 15 working days beginning with the date on which it became aware of the move, request that the new local authority makes an EHC needs assessment or reviews the EHC Plan, and where the new local authority receives such a request it must comply with that request.

Change of responsible commissioning body

16.—(1) This regulation applies where, in relation to a child or young person in respect of whom an EHC plan is maintained, another commissioning body becomes the responsible commissioning body for that child or young person, and the local authority which maintains the EHC plan remains the same.

(2) The original responsible commissioning body must notify the new responsible commissioning body of the change in responsible commissioning body within 15 working days beginning on the day on which it became aware of the change.

(3) Where it is not practicable for the new commissioning body to arrange the health care provision specified in the EHC plan, it must, within 15 working days beginning with the date on which it became aware that it is the new responsible commissioning body, request the local authority makes an EHC needs assessment or reviews the EHC Plan, and where the local authority receives such a request it must comply with that request.

Restriction on disclosure of EHC plans

17.—(1) Subject to the provisions of the Act and of these Regulations, an EHC plan in respect of a child or young person shall not be disclosed without the child or young person's consent except—

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

(b) for the purposes of any appeal under the Act;

(c) for the purposes of educational research which, in the opinion of the local 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 child concerned and the child's parent or the young person;

(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(**a**) (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(**b**) of the Education Act 1996(**c**).

(g) for the purposes of an assessment of the needs of the child or young 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(**d**);

(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(**e**);

(**a**) 1974 c.7

(**b**) Section 497A was inserted into the 1996 Act by section 8 of the 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 (c.22)

(**c**) 1996 c.56

(**d**) 1986 c.33

(**e**) 1989 c.41

(i) to Her Majesty's Chief Inspector of Education, Children's Services and Skills(**a**), exercising the right to inspect and take copies of an EHC plan in accordance with section 10(1)(e) of the Education Act 2005(**b**) and section 140(2)(a) of the Education and Inspections Act 2006;

(j) to the person in charge of any relevant youth accommodation for the purposes of the provision of education or training for a detained person(**c**);

(k) to a youth offending team for the purposes of the provision of education or training for a detained person.

(2) 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.

(3) If 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.

(4) The arrangements for keeping a child or young 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.

(5) 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.

Reviews and re-assessments

Circumstances in which a local authority must review an EHC plan

18.—(1) Except where paragraph (3) applies, where a child or young person is within 12 months of a transfer between phases of education, the local authority must review and amend, where necessary, the child or young person's EHC plan before—

(a) 31 March in the calendar year of the child or young person's transfer from secondary school to a post-16 institution; and

(b) 15 February in the calendar year of the child's transfer in any other case,

and where necessary amend the EHC plan so that it names the school, post-16 or other institution, or type of school or institution, which the child or young person will attend following that transfer.

(2) Where it is proposed that a young person transfers from one post-16 institution to another post-16 institution at any other time, the local authority must review and amend, where necessary, the young person's EHC plan at least five months before that transfer takes place so that it names the post-16 institution that the young person will attend following the transfer.

(3) Where a child or young person is due to transfer from a secondary school to a post-16 institution on 1 September 2015 the local authority must amend and review the EHC plan under paragraph (1)(a) before 31 May 2015.

Conduct of reviews

19. When undertaking a review of an EHC plan, a local authority must—

(a) consult the child and the child's parent or the young person, and take account of their views, wishes and feelings;

(b) consider the child or young person's progress towards achieving the outcomes specified in the EHC plan and whether these outcomes remain appropriate for the child or young person;

(c) consult the school or other institution attended by the child or young person.

(**a**) 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)

(**b**) 2005 c.18

(**c**) 'Relevant youth accommodation' and 'detained person' have the same meaning as in section 72(5) of the 2014 Act.

Review where the child or young person attends a school or other institution

20.—(1) As part of a review of a child or young person's EHC plan, the local authority must ensure that a meeting to review that EHC plan is held and in the case of a child or young person attending a school referred to in paragraph (12), can require the head teacher or principal of the school to arrange and hold that meeting.

(2) The following persons must be invited to attend the review meeting—

(a) the child's parent or the young person;

(b) the provider of the relevant early years education or the head teacher or principal of the school, post-16 or other institution attended by the child or young person;

(c) an officer of the authority who exercises the local authority's education functions in relation to children and young people with special educational needs;

(d) a health care professional identified by the responsible commissioning body to provide advice about health care provision in relation to the child or young person;

(e) an officer of the authority who exercises the local authority's social services functions in relation to children and young people with special educational needs.

(3) At least two weeks' notice of the date of the meeting must be given.

(4) The person arranging the review meeting must obtain advice and information about the child or young person from the persons referred to in paragraph (2) and must circulate it to those persons at least two weeks in advance of the review meeting.

(5) The child or young person's progress towards achieving the outcomes specified in the EHC plan must be considered at the meeting.

(6) When the child or young person is in or beyond year 9, the review meeting must consider what provision is required to assist the child or young person in preparation for adulthood and independent living.

(7) Where the child or young person attends a school referred to in paragraph (12), the local authority must ask the head teacher or principal of the school to prepare a written report on the child or young person, setting out that person's recommendations on any amendments to be made to the EHC plan, and referring to any difference between those recommendations and recommendations of others attending the meeting.

(8) Where the child or young person does not attend a school referred to in paragraph (12), the local authority must prepare a written report on the child or young person, setting out its recommendations on any amendments to be made to the EHC plan, and referring to any difference between those recommendations and recommendations of others attending the meeting.

(9) The written report must include advice and information about the child or young person obtained in accordance with paragraph (4) and must be prepared within two weeks of the review meeting, and sent to everyone referred to in paragraph (2).

(10) The local authority must then decide whether it proposes to—

(a) continue to maintain the EHC plan in its current form;

(b) amend it; or

(c) cease to maintain it,

and must notify the child's parent or the young person and the person referred to in paragraph (2)(b) within four weeks of the review meeting.

(11) If the local authority proposes to continue or to cease to maintain the child or young person's EHC plan, it must also notify the child's parent or the young person of—

(a) their right to appeal matters within the EHC plan in accordance with section 51(2)(e) of the Act;

(b) the time limits for doing so;

(c) the information concerning mediation, set out in regulation 32; and

(d) the availability of—

(i) disagreement resolution services; and

(ii) information and advice about matters relating to the special educational needs of children and young people.

(12) Schools referred to in this paragraph are—

(a) maintained schools;

(b) maintained nursery schools;

(c) Academy schools;

(d) alternative provision Academies(**a**);

(e) pupil referral units(**b**);

(f) non-maintained special schools(**c**);

(g) independent educational institutions approved under section 41 of the Act.

Review of EHC plan where the child or young person does not attend a school or other institution

21.—(1) This regulation applies where a local authority carry out a review of an EHC plan and the child or young person concerned does not attend a school or other institution.

(2) The local authority must invite the following persons to a meeting as part of the review of an EHC plan—

(a) the child's parent or the young person;

(b) an officer of the authority who exercises the local authority's education functions in relation to children and young people with special educational needs;

(c) a health care professional identified by the responsible commissioning body to provide advice about health care provision to the child or young person;

(d) an officer of the authority who exercises the local authority's social services functions in relation to children and young people with special educational needs;

(e) any other person whose attendance the local authority considers appropriate.

(3) At least two weeks' notice of the date of the meeting must be given.

(4) The local authority must obtain advice and information about the child or young person from the persons referred to in paragraph (2) and must circulate it to those persons at least two weeks in advance of the review meeting

(5) The meeting must consider the child or young person's progress towards achieving the outcomes specified in the EHC plan.

(6) When the child or young person is in or beyond year 9, the review meeting must consider what provision is required to assist the child or young person in preparation for adulthood and independent living.

(7) The local authority must prepare a report on the child or young person within two weeks of the review meeting setting out its recommendations on any amendments required to be made to the EHC plan, and should refer to any difference between those recommendations and recommendations of others attending the meeting.

(8) The written report must include advice and information about the child or young person obtained in accordance with paragraph (4) and must be prepared within two weeks of the review meeting, and sent to everyone referred to in paragraph (2).

(9) The local authority must decide whether it proposes to—

(**a**) Alternative provision Academies has the meaning given in section 1C of the Academies Act 2010 . Section 1C was inserted by section 53(7) of the 2011 Act

(**b**) Pupil Referral Units has the same meaning given in section 19 of the 1996 Act

(**c**) Non-maintained special school has the same meaning given in section 342 of the 1996 Act

(a) continue to maintain the EHC plan in its current form;

(b) amend it; or

(c) cease to maintain it,

and must notify the child's parent or the young person within four weeks of the review meeting.

(10) If the local authority proposes to continue or to cease to maintain the child or young person's EHC plan, it must also notify the child's parent or the young person of—

(a) their right to appeal matters within the EHC plan in accordance with section 51(2)(e) of the Act;

(b) the time limits for doing so;

(c) the information concerning mediation, set out in regulation 32; and

(d) the availability of—

(i) disagreement resolution services; and

(ii) advice and information about matters relating to the special educational needs of children and young people.

Amending an EHC plan following a review

22.—(1) Where the local authority is considering amending an EHC plan following a review it must comply with the requirements of regulations 11, and 12, and with sections 33 of the Act, and with sections 39 and 40 of the Act (as appropriate).

(2) Where the local authority is considering amending an EHC plan following a review it must—

(a) send the child's parent or the young person a copy of the EHC plan together with a notice specifying the proposed amendments, together with copies of any evidence which supports those amendments;

(b) provide the child's parent or the young person with notice of their right request the authority to secure that a particular school is or other institution is named in the plan under section 38(2)(b)(ii)

(c) 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;

(ii) request that a particular school or other institution be named in the plan;

(iii) request a meeting with an officer of the local authority, if they wish to make representations orally.

(d) advise them where they can find information about the schools and colleges that are available for the child or young person to attend.

(3) Where the local authority decides to amend the EHC plan following representations from the child's parent or the young person, it must send the finalised EHC plan to—

(a) the child's parent or to the young person;

(b) the governing body, proprietor or principal of any school or other institution named in the EHC plan; and

(c) to the responsible commissioning body

as soon as practicable, and in any event within 8 weeks of the local authority sending a copy of the EHC plan in accordance with paragraph (2)(a).

(4) Where the local authority decides not to amend the EHC plan, it must notify the child's parent or the young person of its decision and its reasons for this as soon as practicable and in any event within 8 weeks of the local authority sending a copy of the EHC plan in accordance with paragraph (2)(a).

(5) When sending a the finalised EHC plan to the child's parent or the young person in accordance with paragraph (3), or notifying them in accordance with paragraph (4) the local authority must also notify them of—

(a) their right to appeal matters within the EHC plan in accordance with section 51(2)(c) or 51(2)(e) of the Act (as appropriate);

(b) the time limits for doing so;

(c) the information concerning mediation, set out in regulation 32; and

(d) the availability of—

(i) disagreement resolution services; and

(ii) advice and information about matters relating to the special educational needs of children and young people.

Other circumstances in which a local authority must secure a re-assessment

23. A local authority must secure a re-assessment of a child or young person's EHC Plan where it receives a request to do so from the responsible commissioning body for that child or young person.

Circumstances in which it is not necessary to re-assess educational, health care and social care provision

24. Where a local authority receives a request to re-assess a child or young person in accordance with section 44(2) of the Act it does not need to do so where—

(a) it has carried out an assessment or re-assessment within the period of six months prior to that request, or

(b) it is not necessary for the authority to make a further assessment.

Notification of decision whether it is necessary to re-assess educational, health care and social care provision

25.—(1) The local authority must notify the child's parent or the young person whether or not it is necessary to reassess the child or young person within 15 days of receiving the request to re-assess.

(2) Where the local authority does not need to re-assess the child or young person the notification under paragraph (1) must also notify them of—

(a) their right to appeal matters within the EHC plan in accordance with section 51(2)(d) of the Act;

(b) the time limits for doing so;

(c) the information concerning mediation, set out in regulation 32; and

(d) the availability of—

(i) disagreement resolution services; and

(ii) advice and information about matters relating to the special educational needs of children and young people.

Securing a re-assessment of educational, health care and social care provision

26.—(1) When securing a re-assessment of educational, health care and social care provision in a child or young person's EHC plan a local authority must comply with the requirements of regulations 6 and 7.

(2) Regulations 8 and 9 also apply to re-assessments.

Amending or replacing an EHC plan following a re-assessment

27.—(1) Where the local authority decides to amend or replace an EHC plan following a reassessment it must comply with the requirements of regulations 11, 12, 13(1) and 14, and with sections 33 and 38 of the Act and with section 39 or 40 of the Act (as appropriate).

(2) The local authority must send a copy of the finalised EHC plan in accordance with section 39(8) or 40(5) of the Act (as appropriate) as soon as practicable, and in any event within 14 weeks of the notification under regulation 25(1)or of deciding it is necessary to reassess under section 44(3) to—

(a) the child's parent or the young person;

(b) the governing body, proprietor or principal of any school or other institution named in the plan; and

(c) the relevant responsible commissioning body.

(3) The local authority need not comply with the time limit referred to in paragraph (2) 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 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) the authority has requested advice from the person identified as having responsibility for special educational needs (if any) in relation to, or other person responsible for, a child's education at a provider of relevant early years education during a period beginning one week before any date on which that provider 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;

(c) exceptional personal circumstances affect the child or his parent, or the young person during that time period; or

(d) the child or his parent, or the young person, are absent from the area of the authority for a continuous period of not less than 4 weeks, during that time period.

(4) (a) Where the local authority carries out a reassessment, it must review the EHC plan within 12 months of the date on which a copy of the finalised plan is sent to the child's parent or the young person in accordance with the requirements in Regulation 14; and

(b) in each subsequent period of 12 months starting with the date on which the plan was last reviewed.

Amending an EHC plan without a review or reassessment

28. If, at any time, a local authority proposes to amend an EHC plan, it shall proceed as if the proposed amendment were an amendment proposed after a review.

Ceasing to maintain an EHC plan

Circumstances in which a local authority may not cease to maintain an EHC plan where the person is under the age of 18

29.—(1) A local authority may not cease to maintain an EHC plan for a child or young person under the age of 18 unless it determines that it is no longer necessary for special educational provision to be made for the child or young person in accordance with an EHC plan.

(2) Where a child or young person under the age of 18 is not receiving education or training, the local authority must review the EHC plan in accordance with regulations 18 and 19 and amend it in accordance with regulation 22 where appropriate, to ensure that the young person continues to receive education or training.

Circumstances in which a local authority may not cease to maintain an EHC plan where the person is aged 18 or over

30.—(1) When a young person aged 18 or over ceases to attend the educational institution specified in his or her EHC plan, so is no longer receiving education or training, a local authority may not cease to maintain that EHC plan, unless it has reviewed that EHC plan in accordance with regulations 18 and 19 and ascertained that the young person does not wish to return to education or training, either at the educational institution specified in the EHC plan, or otherwise, or determined that returning to education or training would not be appropriate for the young person.

(2) Where following the review, the local authority ascertains that the young person wishes to return to education or training either at the educational institution specified in the EHC plan, or at another educational institution, and determines that it is appropriate for the young person to do so, it must amend the young person's EHC plan as it thinks necessary in accordance with regulation 22.

Procedure for determining whether to cease to maintain EHC plan

31.—(1) Where a local authority is considering ceasing to maintain a child or young person's EHC plan it must—

(a) inform the child's parent or the young person that it is considering ceasing to maintain the child or young person's EHC plan; and

(b) consult the child's parent or the young person;

(c) consult the head teacher, principal or equivalent person at the educational institution that is named in the EHC plan.

(2) Where, following that consultation the local authority determines to cease to maintain the child or young person's EHC plan, it must notify the child's parent or the young person, the institution named in the child or young person's EHC plan and the responsible commissioning body of that decision.

(3) When notifying the child's parent or the young person of its decision to cease to maintain the EHC plan, 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 32; and

(d) the availability of—

(i) disagreement resolution services; and

(ii) advice and information about matters relating to the special educational needs of children and young people.

Mediation

Information to be included in notices sent by a local authority

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

(a) the right of the child's parent or young person to request mediation under section 53 or 54 of the Act;

(b) the requirement to obtain a certificate in accordance with section 55(4) or (5) ("a mediation certificate") before any appeal can be made to the First-tier Tribunal(**a**);

(**a**) The First-tier Tribunal was established under section 3 of the Tribunals, Courts and Enforcement Act 2007 (c.15)

(c) contact details for the mediation adviser that the child's parent or young person should contact to obtain that certificate;

(d) the timescales for requesting mediation;

(e) the requirement to inform the local authority—

(i) if the parent or young person wishes to pursue mediation,

(ii) the mediation issues(**a**), and

(iii) where the mediation issues are or include the fact that no health care provision, or no health care provision, of a particular kind is specified in the EHC plan, the health care provision that the child's parent or young person wishes to be specified in the EHC plan;

(f) contact details for any person acting on behalf of the local authority whom the child's parent or young person should contact if they wish to pursue mediation.

Requirement to consider mediation

33. Where a parent or young person is required to obtain a mediation certificate, he or she must contact the mediation adviser within 2 months after written notice of the local 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 a parent or young person does not wish to or fails to pursue mediation

34.—(1) Where a parent or young 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) within 3 working days of being informed by the parent or young person.

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

(3) A parent or young person may seek leave to appeal to the First-tier Tribunal not withstanding 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 parent or young person has failed to comply with Regulation 33 and the time for doing so has elapsed.

Mediation – health care issues

35.—(1) This regulation applies where a parent or young person has informed the local authority that he or she wishes to pursue mediation and the mediation issues relate solely or in part to the healthcare provision specified in the EHC plan, or the fact that no health care or no health care of a particular kind is specified in the EHC plan.

(2) The local authority must, within 3 working days, from the date of being informed that the child's parent or the young person wishes to pursue mediation, notify each relevant commissioning body of—

(a) the mediation issues; and

(b) where the mediation issues are, or include, the fact that no health care provision, or no health care provision of a particular kind, is specified in the EHC plan, the health care provision that the child's parent or young person has informed the local authority he or she wishes to be specified in the plan.

(3) Where the mediation issues relate solely to health care provision, the responsible commissioning body (or, where there is more than one, the responsible commissioning bodies

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(**a**) Mediation issues has the same meaning as in section 53(1)(b) of the Act

acting jointly) must arrange for mediation between it (or them) and the child's parent or young person within 30 days from the date on which it (or they) receive notification from the local authority under paragraph (2).

(4) Where the mediation issues do not relate solely to health care provision, the local authority must arrange for mediation between it, each responsible commissioning body and the parent or young person within 30 days from the date on which it was informed by the parent or young person that he or she wished to pursue mediation.

Mediation – no health care issues

36.—(1) This regulation applies where a parent or young person has informed the local authority that he or she wishes to pursue mediation and the mediation issues do not relate to health care provision.

(2) The local authority must arrange for mediation between it and the child's parent or young person, within 30 days from the date of on which it was informed by the child's parent or young person that he or she wished to pursue mediation.

Arrangements for mediation

37.—(1) The body (or bodies) arranging the mediation must ensure that it is attended by persons who have authority to resolve the mediation issues.

(2) That body must inform the child's parent or the young person of the date and place of the mediation at least 5 working days prior to the mediation unless the child's parent or the young person consents to this period of time being reduced.

Attendance at the mediation

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

(a) the parties to the mediation;

(b) any advocate or other supporter that the child's parent or the young 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 parent and the mediator);

(d) where the young person's alternative person(**a**) is a party to the mediation, the young person (with the agreement of the alternative person and the mediator);

(e) any other person, with the consent of all 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 mediation issues.

(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 mediation issues.

Mediation certificate under section 55(5)

39.—(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) to the parent or young 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 local authority is unable to arrange for mediation within the period specified in regulation 35(4) or 36(2), the local 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.

(**a**) Alternative person has the meaning given in Regulation 64

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

Training, qualifications and experience of mediators

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

Expenses

41.—(1) Subject to paragraph (2), the body arranging the mediation shall pay the following expenses in connection with the child's parent or young person attending mediation—

Table 1

Item	*Description*
Travel Costs	Standard class public transport fares for the parent and their child or the young person. 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 body 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 body arranging the mediation;

(b) payment is made upon receipt of satisfactory supporting evidence of the expenses claimed.

Steps to be taken by a local authority

42.—(1) This regulation applies where mediation has taken place and the parties to the mediation reach an agreement, to be recorded in writing ("the mediation agreement").

(2) Where the mediation issues in the mediation agreement are those on which the child's parent or young person has a right to appeal to the First-tier Tribunal, the local authority shall comply with the time limits set out in regulation 44, as if the mediation agreement were an order of the First–tier Tribunal.

(3) Where the mediation agreement requires the local authority or responsible commissioning body to do something in relation to which the child's parent or young person has no right of appeal to the First-tier Tribunal, the local authority or responsible commissioning body must do that thing within two weeks of the date of the mediation agreement.

(4) Where the local authority was not a party to the mediation, the responsible commissioning body must notify the local authority of the mediation agreement within 1 week of the date of that agreement.

(5) 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.

Appeals

Powers of the First-tier Tribunal

43.—(1) Before determining any appeal, 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 child or the young person.

(2) When determining an appeal the powers of the First-tier Tribunal include the power to—

(a) dismiss the appeal;

(b) order the local authority to arrange an assessment of the child or young person under section 36 or a reassessment under section 44(2) where the local authority has refused to do so, where the appeal made under section 51(2)(a) or (d);

(c) order the local authority to make and maintain an EHC Plan where the local authority has refused to do so, where the appeal is made under section 51(2)(b);

(d) refer the case back to the local authority for them to reconsider whether, having regard to any observations made by the First-tier Tribunal, it is necessary for the local authority to determine the special educational provision for the child or young person, where the appeal is made under section 51(2)(b);

(e) order the local authority to continue to maintain the EHC Plan in its existing form where the local authority has refused to do so, where the appeal is made under section 51(2)(c), (e) or (f);

(f) order the local authority to continue to maintain the EHC Plan with amendments where the appeal is made under section 51(2)(c) or (e) so far as that relates to either the assessment of special educational needs or the special educational provision and make any other consequential amendments as the First-tier Tribunal thinks fit;

(g) order the local 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 51(2)(c)(iii) or (iv);

(h) where appropriate, when making an order in accordance with paragraph (g) this may include naming—

(i) a special school or institution approved under section 41 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 is specified in the EHC Plan.

Compliance with the orders of the First-tier Tribunal

44.—(1) Subject to paragraph (3) or any direction made by the First-tier Tribunal, if the First-tier Tribunal makes an order requiring a local authority to take any action, the local authority shall take that action within the period specified in paragraph (2).

(2) Where the order—

(a) dismisses an appeal against a determination to cease an EHC Plan, the local authority shall cease to maintain the EHC Plan immediately;

(b) requires a local authority to make an assessment or reassessment, the local authority shall within 2 weeks of the order being made notify the child's parent or the young person that it shall make the assessment or reassessment and shall—

(i) where, following the assessment or reassessment, the local authority decides that it is not necessary for special educational provision to be made for the child or the young person, in accordance with an EHC plan, notify the child's parent or the young

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

(ii) where, following the assessment or reassessment, it decides that it is necessary for special educational provision to be made for the child or the young person, in accordance with an EHC plan, it must send the finalised plan to 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;

(c) requires a local authority to make and maintain an EHC Plan, the local authority shall—

(i) issue a draft EHC Plan within 5 weeks of the order being made; and

(ii) send a copy of the finalised EHC plan to the child's parent or young person under Regulation 14, within 11 weeks of the order being made.

(d) refers the case back to the local authority for it to reconsider, the local authority shall do so within 2 weeks of the order being made and shall either send a copy of the draft EHC Plan as required under Regulation 13 or give notice as required under Regulation 5 of any decision not to maintain an EHC Plan;

(e) requires a local authority to amend the special educational provision specified in an EHC Plan, the local authority shall issue the amended EHC Plan within 5 weeks of the order being made;

(f) requires the local 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 local authority shall issue the amended EHC plan within 2 weeks of the order being made;

(g) requires the local authority to continue to maintain an EHC Plan in its existing form, the local authority shall continue to maintain the EHC Plan; and

(h) to continue and amend an EHC Plan, the local authority shall continue to maintain the EHC Plan and amend the EHC Plan within 5 weeks of the order being made.

(3) The local authority need not comply with the time limits specified in paragraph (2)(b) and (c) if it is impractical to do so because—

(a) exceptional personal circumstances affect the child or their parent, or the young person during that period of time;

(b) the child or their parent or the young person is absent from the area of the authority for a continuous period of 2 weeks or more during that period of time; or

(c) any of the circumstances referred to in regulation 13(3) apply.

Unopposed appeals

45.—(1) This regulation applies where the child's parent or young person has appealed to the First-tier Tribunal and the local authority notifies the First-tier Tribunal that it will 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 concerned a request for a local authority to make an assessment under section 36 or a review or reassessment under section 44, the local authority shall carry out that assessment, review or reassessment within 4 weeks of the local authority's notification to the First-tier Tribunal.

(4) Where the appeal concerns the contents of the EHC Plan, then the local authority shall issue the amended EHC Plan within 4 weeks of the local authority's notification to the First-tier Tribunal.

(5) Where the appeal concerns the name of the school or other institution, or type of school or other institution to be named in the EHC plan, the local authority shall issue the amended EHC plan within 2 weeks of the local authority's notification to the First–tier Tribunal.

(6) Where the appeal concerns the refusal of the local authority to make an EHC Plan, then the local authority will arrange to make an EHC Plan within 5 weeks of the local authority's notification to the First-tier Tribunal.

(7) The local authority need not comply with the time limits specified in paragraphs (3), (4) or (6) if it is impractical to do so because—

(a) exceptional personal circumstances affect the child or their parent or the young person during the relevant period;

(b) the child or their parent or the young person are absent from the area of the local authority for a continuous period of not less than 2 weeks during the relevant period; or

(c) any of the circumstances referred to in regulation 13(3) apply.

Miscellaneous provisions

Academic year

46.—(1) For the purposes of section 46 of the Act, an academic year is the period of twelve months which ends—

(a) in relation to a young person attending an institution within the further education sector on 31st July;

(b) in relation to a young person receiving apprenticeship training, on the date that that apprenticeship training finishes, or on the day before the young person attains the age of 26 if earlier;

(c) in all other cases, on the day that the young person's course of education or training is scheduled to end, or on the day before the young person attains the age of 26 if earlier.

(2) In this regulation 'apprenticeship training' has the same meaning as in section 83(5) of the Apprenticeships, Skills, Children and Learning Act 2009(**a**).

Disclosure of EHC plans in relation to higher education

47. When a young person is intending to undertake a course of higher education, the local authority must disclose a copy of that young person's EHC plan to—

(a) any person in connection with the young person's application for a disabled student's allowance in accordance with chapter 3 of part 5 of the Education (Student Support) Regulations 2011(**b**); and

(b) the principal (or equivalent position) of the institution at which it has been confirmed that the young person has a place to undertake a course of higher education,

within 15 working days of being asked to do so by the young person.

Remaining in a special school or special post-16 institution without an EHC plan

48.—(1) Where a child or young person has been admitted to a special school or special post-16 institution for the purposes of an EHC needs assessment, he or she may remain at that school or post-16 institution—

(a) for a period of ten school or institution days after the local authority serves a notice under section 36(9) of the Act informing the child's parent or the young person that it does not propose to make an EHC plan; or

(b) until an EHC plan is finalised.

(**a**) 2009 c.22
(**b**) S.I.2011/1986

(2) In this regulation "school or institution day" means a day on which the school or post-16 institution is open to admit students.

PART 3

Duties on schools

Special Educational Needs Co-ordinators

Prescribed qualifications and experience of SENCOs

49.—(1) The appropriate authority of a relevant school must ensure that the SENCO appointed under section 67(2) of the Act meets all of the requirements in either paragraph (2) or (3).

(2) The requirements in this paragraph are that the SENCO—

(a) is a qualified teacher;

(b) if required to complete an induction period under regulations made under section 135A of the Education Act 2002(**a**), has satisfactorily completed such an induction period; and

(c) is working as a teacher at the school.

(3) The requirement in this paragraph is that the SENCO is the head teacher or acting head teacher (or equivalent in the case of an Academy school) of the school.

(4) Where a person becomes the SENCO at a relevant school after 1st September 2009, and has not previously been the SENCO at that or any other relevant school for a total period of more than twelve months, the appropriate authority of the school must ensure that, if the person is the SENCO at the school at any time after the third anniversary of the date on which that person becomes a SENCO, that person holds the qualification, mentioned in paragraph (5).

(5) The qualification referred to in paragraph (4) is a postgraduate qualification in special educational needs co-ordination, for the time being known as "The National Award for Special Educational Needs Co-ordination", awarded by a recognised body.

(6) For the purposes of paragraph (5), a recognised body is a body designated by the Secretary of State by order made under section 216(1) of the Education Reform Act 1988(**b**);

Appropriate authority functions and duties relating to the SENCO

50.—(1) The appropriate authority of a relevant school must determine the role of the SENCO in relation to the leadership and management of the school.

(2) The appropriate authority of a relevant school must determine the functions of the SENCO in addition to those under section 67(2) of the Act and monitor the effectiveness of the SENCO in undertaking those responsibilities.

(3) The functions referred to in paragraph (1) may include the carrying out, or arranging for the carrying out, of the following tasks—

(a) in relation to each of the registered pupils who the SENCO considers may have special educational needs, informing a parent of the pupil that this may be the case as soon as is reasonably practicable;

(b) in relation to each of the registered pupils who have special educational needs—

(i) identifying the pupil's special educational needs, and co-ordinating the making of special educational provision which meets those needs,

(ii) monitoring the effectiveness of any special educational provision made,

(iii) securing relevant services for the pupil where necessary,

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(**a**) 2002 c.32. Section 135A was inserted by section 9 of the Education Act 2011 (c.21)
(**b**) 1988 c.40

(iv) ensuring that records of the pupil's special educational needs and the special educational provision made are maintained and kept up to date,

(v) liaising with and providing information to a parent of the pupil on a regular basis about that pupil's special educational needs and the special educational provision being made,

(vi) ensuring that, where the pupil transfers to another school or educational institution, all relevant information about the pupil's special educational needs and the special educational provision made is conveyed to the appropriate authority or (as the case may be) the proprietor of that school or institution, and

(vii) promoting the pupil's inclusion in the school community and access to the school's curriculum, facilities and extra-curricular activities;

(c) selecting, supervising and training learning support assistants who work with pupils with special educational needs;

(d) advising teachers at the school about differentiated teaching methods appropriate for individual pupils with special educational needs;

(e) contributing to in-service training for teachers at the school to assist them to carry out the tasks referred to in paragraph (b); and

(f) preparing and reviewing the information required to be published by the appropriate authority pursuant to regulation 51, the objectives of the appropriate authority in making provision for special educational needs, and the special educational needs policy referred to in paragraph 3 of Schedule 1 to these Regulations.

(4) For the purposes of paragraph (2)(b)(iii) "relevant services" means—

(a) special educational provision, or advice or assistance in relation to such provision or its management; and

(b) the assessment of special educational needs, or advice or assistance in relation to such needs or in relation to the management of pupils with such needs.

SEN information report

Prescribed information that must be included in SEN information report

51. For the purpose of section 69(3)(a) of the Act the SEN information which the governing body or proprietor of every maintained school, maintained nursery school and Academy school (other than a special school that is established in a hospital) must include in a report containing SEN information is set out in Schedule 1.

Manner of publication of report

52. The governing body or proprietor of the school must publish on the school's website its report containing SEN information.

PART 4

Local Offer

Information to be included in the local offer

53. A local authority must include the information in Schedule 2 when it publishes its local offer.

Consultation

54.—(1) When preparing and reviewing its local offer, a local authority must consult the following persons in its area—

(a) children and young people with special educational needs and the parents of children with special educational needs;

(b) children and young people with a disability, and the parents of children with a disability;

(c) the governing bodies of maintained schools and maintained nursery schools;

(d) the proprietors of Academies(**a**);

(e) the governing bodies, proprietors or principals of post-16 institutions;

(f) the governing bodies of non-maintained special schools;

(g) the management committees of pupil referral units;

(h) the advisory boards of children's centres;

(i) the providers of relevant early years education;

(j) the youth offending teams that the authority thinks have functions in relation to children or young people for whom it is responsible;

(k) any other person that makes special educational provision for a child or young person for whom it is responsible and those who provide advice in relation to making that provision;

(l) persons who make provision to assist children and young people in preparation for adulthood and independent living;

(m) its officers who—

(i) exercise the authority's functions relating to education or training;

(ii) exercise the authority's social services functions for children or young people with special educational needs or a disability;

(iii) so far as they are not officers within paragraph (i) or (ii), exercise the authority's functions relating to provision to assist children and young people in preparation for adulthood and independent living; and

(n) such other persons as it thinks appropriate.

(2) When preparing and reviewing its local offer, a local authority must also consult—

(a) the National Health Service Commissioning Board;

(b) any clinical commissioning group—

(i) whose area coincides with, or falls wholly or partly within, the local authority's area, or

(ii) which exercises functions in relation to children or young people for whom the authority is responsible;

(c) any NHS trust or NHS foundation trust which provides services in the authority's area, or which exercises functions in relation to children or young people for whom the authority is responsible;

(d) any local Health Board which exercises functions in relation to children or young people for whom the authority is responsible;

(e) any health and wellbeing board established under section 194 of the Health and Social Care Act 2012(**b**) which exercises functions in relation to children or young people for whom the authority is responsible.

(3) When preparing and reviewing its local offer, a local authority must also consult any bodies specified in paragraphs (1)(b) to (k) and (m) that are not in the local authority's area, but which the local authority thinks are or are likely to either—

(a) be attended by children or young people for whom it is responsible; or

(b) have functions in relation to children or young people for whom it is responsible.

(**a**) An academy has the same meaning as in section 1(10) of the Academies Act 2010

(**b**) 2012 c.7

Involvement of children, their parents and young people in preparation and review of local offer.

55. A local authority must consult children and young people with special educational needs or a disability and the parents of children with special educational needs or a disability in their area about—

(a) the services children and young people with special educational needs or a disability require;

(b) how the information in the local offer is to be set out when published;

(c) how the information in the local offer will be available for those people without access to the Internet;

(d) how the information in the local offer will be accessible to those with special educational needs or a disability;

(e) how they can provide comments on the local offer.

Publication of comments on the local offer

56.—(1) A local authority must seek from children and young people with special educational needs or a disability, and the parents of children with special educational needs or a disability comments on—

(a) the content of its local offer, including the quality of the provision that is included and any provision that is not included;

(b) the accessibility of the information contained in its local offer; and

(c) how the local offer has been developed or reviewed, including how those children, parents and young people have been involved in the development and review of the local offer.

(2) Subject to paragraph (3), a local authority must publish comments received by or on behalf of those people in accordance with paragraph (1), and its response to those comments (including details of any action the authority intends to take) on its website, with the local offer.

(3) Comments received and the local authority's response must be published at least annually, and must be in a form that does not enable any individual to be identified.

(4) The local authority is not required to publish or respond to any comments which—

(a) it considers to be vexatious; or

(b) relate to services provided to a particular individual.

Manner of publication

57. A local authority must—

(a) publish its local offer by placing it on their website;

(b) publish its arrangements for enabling—

(i) people without access to the Internet; and

(ii) different groups, including people with special educational needs or a disability,

to obtain a copy of the offer; and

(c) publish how those people identified in paragraph (b) can provide comments on the local offer.

PART 5

Approval of independent special schools and special post-16 institutions

Types of special post-16 institution that may be approved

58. The Secretary of State may approve a special post-16 institution under section 41 of the Act where it is not—

(a) an institution within the further education sector;

(b) a 16 to19 Academy(**a**);

(c) maintained by a local authority.

Matters to be taken into account in deciding to give approval

59.—(1) The Secretary of State may take into account the following matters when deciding whether to give approval to a special post 16 institution, an independent educational institution or an independent school—

(a) evidence relating to the financial viability of the institution;

(b) the proportion of children and young people attending the institution who have an EHC plan (or a statement of special educational needs or learning difficulty assessment); and

(c) reports relating to the institution by Her Majesty's Chief Inspector of Education, Children's Services and Skills, the Care Quality Commission(**b**), and any inspectorate which inspects independent schools in accordance with an agreement with the Secretary of State or which is approved by the Secretary of State under section 106 of the Education and Skills Act 2008(**c**).

(2) Where reports referred to in paragraph 1(c) are not available, the Secretary of State may consider such other evidence as the Secretary of State considers appropriate in relation to the quality of the educational provision at the institution or school concerned.

Matters to be taken into account in deciding to withdraw approval

60. The Secretary of State may take into account the following matters when deciding whether to withdraw approval—

(a) the matters identified in regulation 59(1); and

(b) any serious concerns about the institution received from a local authority or a child or young person attending the institution or from any other person.

Procedure when the Secretary of State decides to withdraw approval

61.—(1) When the Secretary of State decides to withdraw the approval of an institution, the Secretary of State must notify the proprietor of the institution of that decision.

(2) The Secretary of State must also notify all local authorities in England of that decision.

(3) The decision will take effect 28 days after that notification is given, and shall remove the institution from the list published in accordance with regulation 62 on the date that the decision takes effect.

(**a**) 16 to19 Academy has the same meaning as section 1B of the Academies Act 2010. Section 1B was inserted by section 53(7) of the 2011 Act

(**b**) The Care Quality Commission was established under section 1 of the Health and Social Care Act 2008 (c.14)

(**c**) 2008 c.25

Publication of list of approved institutions

62. The Secretary of State must publish a list of all institutions that have been approved, and have not had that approval withdrawn, on the Internet.

PART 6

Parents and young people lacking capacity

Where a child's parent lacks capacity

63. In a case where a child's parent lacks capacity at the relevant time references in—

(a) Part 3 of the Act, and

(b) these regulations, except the references in regulation 6(1)(b)(iv) and paragraph 15(b) of Schedule 2,

to a child's parent or the parent of a detained person who is a child are to be read as references to a representative of the parent.

Where a young person lacks capacity

64.—(1) In a case where a young person lacks capacity at the relevant time—

(a) references to a young person in the provisions of Part 3 of the Act listed in Part 1 of Schedule 3 are to be read as references to both the young person and the alternative person;

(b) references to a young person or a detained person who is a young person in the provisions of Part 3 of the Act listed in Part 2 of Schedule 3 are to be read as references to the alternative person instead of the young person; and

(c) references to a young person in these regulations listed in Part 3 of Schedule 3 are to be read as references to both the young person and the alternative person; and

(d) references to a young person in these regulations listed in Part 4 of Schedule 3 are to be read as references to the alternative person instead of the young person.

(2) For the purposes of this regulation, "the alternative person" means—

(a) a representative of the young person;

(b) the young person's parent, where the young person does not have a representative;

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

Mental Capacity Act 2005

65. Regulations 63 and 64 have effect in spite of section 27(1)(g) of the Mental Capacity Act 2005(**a**).

Edward Timpson
Parliamentary Under Secretary of State
Department for Education

4th June 2014

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

SCHEDULE 1

Regulation 51

Information to be included in the SEN information report

1. The kinds of special educational needs for which provision is made at the school.

2. Information, in relation to mainstream schools and maintained nursery schools, about the school's policies for the identification and assessment of pupils with special educational needs.

3. Information about the school's policies for making provision for pupils with special educational needs whether or not pupils have EHC Plans, including—

(a) how the school evaluates the effectiveness of its provision for such pupils;

(b) the school's arrangements for assessing and reviewing the progress of pupils with special educational needs;

(c) the school's approach to teaching pupils with special educational needs;

(d) how the school adapts the curriculum and learning environment for pupils with special educational needs;

(e) additional support for learning that is available to pupils with special educational needs;

(f) how the school enables pupils with special educational needs to engage in the activities of the school (including physical activities) together with children who do not have special educational needs; and

(g) support that is available for improving the emotional, mental and social development of pupils with special educational needs.

4. In relation to mainstream schools and maintained nursery schools, the name and contact details of the SEN co-ordinator.

5. Information about the expertise and training of staff in relation to children and young people with special educational needs and about how specialist expertise will be secured.

6. Information about how equipment and facilities to support children and young people with special educational needs will be secured.

7. The arrangements for consulting parents of children with special educational needs about, and involving such parents in, the education of their child.

8. The arrangements for consulting young people with special educational needs about, and involving them in, their education.

9. Any arrangements made by the governing body or the proprietor relating to the treatment of complaints from parents of pupils with special educational needs concerning the provision made at the school.

10. How the governing body involves other bodies, including health and social services bodies, local authority support services and voluntary organisations, in meeting the needs of pupils with special educational needs and in supporting the families of such pupils

11. The contact details of support services for the parents of pupils with special educational needs, including those for arrangements made in accordance with section 32.

12. The school's arrangements for supporting pupils with special educational needs in a transfer between phases of education or in preparation for adulthood and independent living.

13. Information on where the local authority's local offer is published.

SCHEDULE 2

Regulation 53

Information to be published by a local authority in its local offer

1. The special educational provision and training provision which the local authority expects to be available in its area for children and young people in its area who have special educational needs or a disability by—

(a) providers of relevant early years education;

(b) maintained schools, including provision made available in any separate unit;

(c) Academies, including provision made available in any separate unit;

(d) non-maintained special schools;

(e) post-16 institutions;

(f) institutions approved under section 41 of the Act;

(g) pupil referral units; and

(h) persons commissioned by the local authority to support children and young people with special educational needs or a disability.

2. The special educational provision and training provision the local authority expects to be made outside its area by persons specified in sub-paragraphs (a) to (g) of paragraph 1 for children and young people in its area with special educational needs or a disability.

3. The information in paragraphs 1 and 2 must include information about—

(a) the special educational provision and training provision provided for children and young people with special educational needs or a disability by mainstream schools and mainstream post-16 institutions including any support provided in relation to learning or the curriculum;

(b) the special educational provision and training provision provided by special schools and special post-16 institutions, and those approved under section 41 of the Act;

(c) the special educational provision and training provision secured by the local authority in mainstream schools, mainstream post-16 institutions, pupil referral units and alternative provision Academies for children and young people with special educational needs or a disability; and

(d) the arrangements the local authority has for funding children and young people with special educational needs including any agreements about how any of the persons specified in paragraph 1 will use any budget that has been delegated to that person by the local authority.

4. The arrangements the persons specified in paragraphs 1 and 2 have for—

(a) identifying the particular special educational needs of children and young people;

(b) consulting with parents of children with special educational needs or a disability and with young people with special educational needs or a disability;

(c) securing the services, provision and equipment required by children and young people with special educational needs or a disability; and

(d) supporting children and young people with special educational needs or a disability in a transfer between phases of education and transfers from one post-16 institution to another, and in preparation for adulthood and independent living.

5. Information, in relation to the persons specified in paragraphs 1 and 2, about-

(a) their approach to teaching of children and young people with special educational needs;

(b) how they adapt the curriculum and the learning environment for children and young people with special educational needs or a disability;

(c) the additional learning support available to children and young people with special educational needs;

(d) how the progress towards any of the outcomes identified for children and young people with special educational needs will be assessed and reviewed, including information about how those children, their parents and young people will take part in any assessment and review;

(e) how the effectiveness of special educational provision and training provision will be assessed and evaluated, including information about how children, their parents and young people will take part in any assessment and evaluation;

(f) how facilities that are available can be accessed by children and young people with special educational needs or a disability;

(g) what activities (including physical activities) are available for children and young people with special educational needs or a disability in addition to the curriculum;

(h) what support is available for children and young people with special educational needs or a disability;

(i) how expertise in supporting children and young people with special educational needs or a disability is secured for teaching staff and others working with those children and young people;

(j) how the emotional, mental and social development of children and young people with special educational needs or a disability will be supported and improved.

6. Where further information about the bodies specified in paragraphs 1 and 2, including the information required by section 69 of the Act, can be obtained.

7. Where the strategy prepared by the local authority under paragraph 1 of Schedule 10 to the Equality Act 2010(**a**) can be obtained.

8. Special educational provision and training provision the local authority expects to be made in relation to young people with special educational needs or a disability who have entered into an apprenticeship agreement within the meaning of section 32(1) of the Apprenticeships, Skills, Children and Learning Act 2009.

9. Special educational provision and training provision the local authority expects to be made by providers of training in its area, and outside its area for young people in its area with special educational needs or a disability.

10. Provision available in the local authority's area to assist children and young people with special educational needs or a disability in preparation for adulthood and independent living.

11. Information about support available to young people with special educational needs or a disability receiving higher education, including any disabled student's allowance available under chapter 3 of Part 5 of the Education (Student Support) Regulations 2011(**b**).

12. Health care provision for children and young people with special educational needs or a disability that is additional to or different from that which is available to all children and young people in the area, including—

(a) services for relevant early years providers, schools and post-16 institutions to assist them in supporting children and young people with medical conditions, and

(b) arrangements for making those services which are available to all children and young people in the area accessible to children and young people with special educational needs or a disability.

(**a**) 2010 c.15

(**b**) SI 2011/1986, as amended by the Education (Student Fees, Awards and Support) (Amendment) Regulations 2012[SI 2012/1628] and Education (Student Support and European University Institute) (Amendment) Regulations 2013[SI 2013/1728]

13. Social care provision for children and young people with special educational needs or a disability and their families including—

(a) services provided in accordance with section 17 of the Children Act 1989;

(b) the arrangements for supporting young people when moving from receiving services for children to receiving services for adults;

(c) support for young people in planning and obtaining support to assist with independent living;

(d) information and advice services made available in accordance with section 4 of the Care Act 2014(**a**).

14. Transport arrangements for children and young people with special educational needs or a disability to get to and from school or post-16 institution, or other institution in which they are receiving special educational provision or training provision including—

(a) arrangements for specialist transport;

(b) arrangements for free or subsidised transport;

(c) support available in relation to the cost of transport, whether from the local authority or otherwise.

15. Sources of information, advice and support in the local authority's area for children and young people with special educational needs or a disability and their families including information—

(a) provided in accordance with section 32 of the Act;

(b) about forums for parents and carers of children and young people with special educational needs or a disability;

(c) about support groups for children and young people with special educational needs or a disability and their families;

(d) about childcare for children with special educational needs or a disability;

(e) about leisure activities for children and young people with special educational needs or a disability and their families;

(f) about persons who can provide further support, information and advice for children and young people with special educational needs or a disability and their families.

16. The procedure for making a complaint about provision mentioned in section 30(2) of the Act.

17. The procedure for making a complaint about any provision or service set out in the local offer.

18. Information about any criteria that must be satisfied before any provision or service set out in the local offer can be provided.

19. Information about how to request an EHC needs assessment, and the availability of personal budgets.

20. Information on where the list of institutions approved under section 41 of the Act is published.

21. Arrangements for notifying parents and young people of their right to appeal a decision of the local authority to the Tribunal.

22. Arrangements for mediation made in accordance with section 53 or 54 of the Act.

(**a**) 2014 c.23

23. Arrangements for the resolution of disagreements made in accordance with section 57 of the Act.

SCHEDULE 3

PART 1

Regulation 64(1)(a)

References to a young person in the Act that are to be read as references to both a young person and an alternative person

The provisions referred to in regulation 64(1)(a) are—

section 19(a), (b), (c) and (d) (first reference);

section 27(3)(a) and (b);

section 30(6)(a)(i) and (ii);

section 30(8)(d)(i) and (ii);

section 32(1) (first reference) and (2) (first reference);

section 32(3)(c).

PART 2

Regulation 64(1)(b)

References to a young person in the Act that are to be read as references to an alternative person

The provisions referred to in regulation 64(1)(b) are—

section 33(2)(a);

section 34(5)(c) and (7)(c);

section 36(1) (second reference), (4), (5) (second reference), (7) (opening words and paragraph (b)) and (9) (opening words);

section 38(1) (second reference), (2)(a) and (b), and (5);

section 39(8)(a);

section 40(5)(a);

section 42(5);

section 44(2)(a) and (6);

section 49(1) (second reference), (2) (second reference), (3)(d) and (4)(a);

section 51(1) and (3) (opening words);

section 52(2), (3) and (4) ;

section 53(1)(a), (3)(a) and (4)(a)(i);

section 54(1)(a) and (2)(a);

section 55(1), (3), (4) (opening words and (b)) and (5) (both references);

section 56(1)(f);

section 57(2)(b), (3)(b), (5)(a) and (8)(b);

section 61(3);

section 68(2) (first reference);

section 70(5) (paragraph (b) of the definition of “appropriate person”).

PART 3

Regulation 64(1)(c)

References to a young person in the Act that are to be read as references to both a young person and an alternative person

The provisions referred to in regulation 64(1)(c) are—

regulation 5(4)(c) and (d);

regulation 7(a), (b), (d) and (e);

regulation 8(2)(a) and (b);

regulation 10(4)(c) and (d);

regulation 12(1)(a);

regulation 17(1)(c) (second reference);

regulation 19(a);

regulation 27(3)(c) and (d)

regulation 41(1) (opening words); and the description accompanying 'Travel Costs'

regulation 44(3)(a) and (b);

regulation 45(7)(a) and (b);

regulation 54(1)(a) and (b)

regulation 55(opening words);

regulation 56(1) (opening words) and (c);

Schedule 2 paragraph 5(d) (second reference) and (e)

PART 4

Regulation 64(1)(d)

References to a young person in the Act that are to be read as references to an alternative person

The provisions referred to in regulation 64(1)(d) are—

regulation 3 (opening words);

regulation 4(1) (opening words);

regulation 5(1) (opening words) and (3);

regulation 6(1)(a) and (h), (3)(a) and (b) and (4);

regulation 9;

regulation 10 (3);

regulation 13(1) and (2)(a);

regulation 14(2);

regulation 15(3)(b);

regulation 17(1) (second reference in opening words);

regulation 20(2)(a), (10), and (11)(second reference in opening words)

regulation 21(2)(a), (9), and (10)(second reference in opening words);

regulation 22(2)(a) and (b), (3)(opening words and (a)), (4) and (5) (opening words);

regulation 25(1) (first reference);

regulation 27(2)(a);

regulation 31(1)(a) (first reference) and (b), (2) (second reference) and (3) (opening words);

regulation 32;

regulation 33;

regulation 34;

regulation 35;

regulation 36;

regulation 37;

regulation 38(1)(b);

regulation 39;

regulation 44 (2)(b)(opening words)(i) (second reference); and (2)(c)(ii);

regulation 45(1);

Schedule 2 paragraph 4(b).

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 25th 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 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*)

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