

## **SECTION 13: CHILDREN OVER COMPULSORY SCHOOL AGE**

### **Index**

- 13.1 About this Section**
- 13.3 Introduction**
- 13.8 What this Means for the School**
- 13.11 What this Means for the EA**
- 13.12 Notices and Documents to a Young Person**
- 13.14 Assistance and Support for a Young Person**
- 13.17 Capacity of the Young Person**
- 13.18 Who will Determine Whether a Young Person Lacks Capacity in the SEN Framework?**
- 13.21 Who can Request a Determination of a Young Person's Capacity?**
- 13.22 Principles: Capacity**
- 13.29 Meaning of "lacks capacity" (for the purpose of this Code of Practice)**
- 13.32 Supporting the Young Person to Make a Decision**
- 13.34 Where the EA Determine that a Young Person Lacks Capacity**
- 13.36 Alternative Person**
- 13.38 Establishing What is in the Young Person's Best Interests**
- 13.44 EA Arrangement for Fulfilling their Requirements with Regard to Young People**

## About this Section

13.1 This Section of the SEN Code of Practice (the Code) provides information about:

- the assistance and support for a young person to exercise their rights on special educational needs (SEN) matters; and
- the requirement on the Educational Authority (EA), if a question of capacity is raised with the EA, to determine if a young person lacks the capacity to exercise their rights or make a decision.

### **This Section is underpinned by:**

- Section 11 of the Special Educational Needs and Disability Act (Northern Ireland) 2016 (the 2016 Act) (Rights of children over compulsory school age in relation to special educational provision) supported by draft regulations:
  - 23 (Assistance and support to a child over compulsory school age exercising rights under Part II of the 1996 Order);
  - 24 (Capacity Determination);
  - 25 (Principles: capacity);
  - 26 (Meaning of “lacks capacity”);
  - 27 (Meaning of “unable to make a decision”);
  - 28 (Supporting a person to make a decision);
  - 29 (Compliance with regulation 25(3));
  - 30 (Children over compulsory school age determined to lack capacity to exercise a right conferred by Part II of the 1996 Order);
  - 31 (Best Interests);
  - 32 (Compliance with regulation 30(3)); and
  - 33 (Where a child over compulsory school age lacks capacity).

**Key point: See the Glossary for the definition of the key terms used in this Code.**

13.2 Unless otherwise stated, any reference to a draft regulation in this Section refers to the draft Education (Special Educational Needs) Regulations (Northern Ireland) 202X. Within this Section, where technology and electronic communication is available, and with the agreement of the young person (or as appropriate a young person's representative or other parties involved), any document issued in writing may be transmitted using this medium.

## **Introduction**

13.3 Section 11 of the 2016 Act, confers certain rights in Part II to the Education (Northern Ireland) Order 1996 (the 1996 Order), to a child who is over compulsory school age who has, or may have, special educational need; these rights were previously exercisable by the parent of that child. In this Section, for ease of reference, "the exercise of any rights conferred on him or her in Part II of the 1996 Order", is referred to as "rights within the SEN and Inclusion Framework" (the SEN Framework). Furthermore, a child who is over compulsory school age (see Glossary "Compulsory school age"), is referred to as a young person in this Code.

13.4 A young person automatically takes over certain rights within the SEN Framework, previously exercised by their parent, once they are over compulsory school age. It is anticipated that for many young people, they will appoint their parent to assist and support them. (See paragraph 13.14). Section 2, paragraphs beginning 2.36 set out the duties, rights and responsibilities of parents, children and young people.

13.5 This is an important shift in rights within the SEN Framework for the young person, their parents, the school (or, as the case may be, other than at school), the young person attends and the EA. If the approach to partnerships with parents, children and young people (see paragraphs beginning 3.59) have been operating

effectively, once the child returns to their post-primary school in Year 13 (the school year following their 16<sup>th</sup> birthday) the fact that the young person has the rights previously exercisable by the parent should come as no surprise to those concerned. Similarly, the young person should have had experience in providing their views within the personal learning plan (PLP) process (see paragraph 3.75) and for the child with a 'Statement of Special Educational Needs' (a Statement), as part of the annual review processes and transition planning processes from the school year during which the child attained age 14. (See Section 8).

13.6 For the school, it will be the young person who has, or may have, SEN, whom the school will be required to engage with, including within the PLP process (for the child with SEN), and at annual review for a young person with a Statement. It is the young person who will be required to make decisions within the SEN Framework, for example, requesting a 'statutory assessment' (an assessment), making representations within the assessment process and meeting with the EA and advice givers within the assessment process, if they wish to do so.

13.7 It is important that information and advice about the shift in rights to a young person is made available in advance of the child becoming a young person. Similarly, it is important that any concerns or issues raised by parents or the child themselves are discussed. Schools should make full use of EA guidance made available for this purpose. Whilst not exhaustive, the following paragraphs provide examples of the circumstances within the SEN Framework where direct involvement with the young person is required, rather than their parent. Paragraphs beginning 13.14 set out arrangements with regard to assistance and support for a young person to exercise their rights and paragraphs beginning 13.34 with regard to a child who may lack capacity to exercise their rights.

**Key point: It is important that information and advice about the shift in rights to a young person is made available in advance of the child becoming a young person.**

## What this Means for the School

13.8 A young person may appoint someone to assist and support them to exercise their rights within the SEN Framework. (See paragraphs beginning at 13.14). A school should keep a record of the details of any person so appointed by the young person. As far as is practicable, the young person should be advised in good time in advance of any meeting or discussion planned about their SEN to allow the young person to arrange for the attendance of that person, if they wish them to attend.

13.9 Within school, whilst not exhaustive, examples of meetings, discussions and verbal and written representations, include:

- (a) for the young person who may have SEN, in the event a concern has been expressed about their progress (see paragraph 3.28) by the young person or a teacher or the Learning Support Co-ordinator (LSC);
- (b) informing the young person, if not previously advised, if the school considers the young person has SEN and special educational provision is being made for them (see paragraph 3.65);
- (c) for the young person who has SEN, any engagement within the preparation, evaluation and review of the young person's PLP whether at Stages 1, 2 or 3 of the special educational provision (see paragraph 3.75);
- (d) for the young person with a PLP, in the event of them moving to a new post-primary school, giving consent (or not) to the school for a copy of their PLP to be passed to the new school (see paragraph 3.87);
- (e) for the young person to request a statutory assessment (see paragraph 4.10);
- (f) for a young person with a Statement, submitting representations and evidence to inform the annual review of the Statement (see Section 7) including the review of the young person's transition plan (see Section 8); and

- (g) for a young person who has a dispute with the school, for example, about the special educational provision including any meetings associated with the EA's arrangements for dispute avoidance and resolution (see Section 12).

13.10 Schools should operate under the arrangements the EA puts in place for raising a question about a young person's capacity to exercise their rights within the SEN Framework. (See paragraphs beginning at 13.18).

### **What this Means for the EA**

13.11 For the EA, whilst not exhaustive, examples of meetings, discussions, verbal and written representations where a young person may request assistance and support, include:

- (a) **Statutory Assessment of a young person** - a young person has a right to: request a statutory assessment (see paragraph 4.10) and make representations, and submit written evidence, to the EA and the right to assistance and support throughout that process. (See Section 4). If the EA decide to make an assessment, the EA may require the young person's attendance at an examination. If the young person requests it, the person appointed to assist and support the young person may attend the examination. The person so appointed, can participate/be involved in all meetings and discussions with the young person throughout the statutory assessment process.
- (b) **The making of a Statement** - if the EA decide to make a Statement, the young person has a right to make representations and meet the EA (and advice givers) about expressing a preference for a school they wish to attend, the content of the proposed Statement (or otherwise) and the advice used to inform it. (See Relevant Party Representations - paragraph 5.32). The young person may make an appeal against the content of the Statement (within the relevant time limits). The person that the young person has appointed may assist and support the young person throughout the Statementing process. (See Section 5).

- (c) **Transition Plan and Annual Review** - the young person, and the person they have appointed to assist and support them, if appropriate, may be involved in any discussions or meeting within this process. If after conducting a review of a Statement the EA does not propose to amend the Statement, intends to amend or proposes to cease it, the young person has a right of appeal which they can choose to exercise. If the young person wants assistance and support, the person they have appointed to do so can be involved within this process. (See Sections 7 and 8).
- (d) **Mediation (about EA decisions which carry a Right of Appeal)** - Section 12 sets out the requirements regarding mediation. A young person who intends to appeal a decision made by the EA may have assistance and support in fulfilling the requirements associated with mediation. If the young person wants assistance and support, the person they have appointed can attend any mediation meetings/discussions. (See paragraph 13.14).
- (e) **Appeal to the Special Educational Needs and Disability Tribunal (SENDIST)** - if a young person chooses to appeal to the Tribunal, they have a right to have someone provide them with assistance and support to help them in preparation for, and during the hearing of, an appeal or disability discrimination claim.

### **Notices and Documents to a Young Person<sup>1</sup>**

13.12 If the EA is involved with a young person, with regard to a child's SEN, for example, about a **statutory assessment** (see Section 4), **making a Statement** (see Section 5), **annual review** (see Section 7) or **transition plan** (see Section 8), the EA is required to serve any statutory Notices directly to the young person unless the young person has directed the EA to send the Notices to the person they have appointed to provide assistance and support. (See paragraph 13.14).

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<sup>1</sup> Article 21A paragraphs (4) to (6) of the 1996 Order.

13.13 If a young person is not yet age 18, the EA is required to inform the young person's parent (in writing) of the fact that:

- a Notice has been issued to the young person and provide a copy of that Notice to the parent; and
- it has issued a copy of a proposed Statement (or otherwise) or a copy of a completed Statement (or otherwise). (See paragraph 5.2).

### **Assistance and Support for a Young Person<sup>2</sup>**

13.14 When exercising their rights within the SEN Framework the young person may choose to appoint any or all of the following: their parent; a representative; or a solicitor, barrister or other legal representative to provide assistance and support. The EA is required to respect any appointment made by the young person and recognise the assistance and support offered by the person so appointed.<sup>3</sup>

13.15 The assistance and support may include:

- (a) legal advice, services and representation;
- (b) assistance with the young person's understanding of any information or Notices received from the EA;
- (c) attending meetings, discussions, mediation, appeals etc;
- (d) assistance in adhering to any requirement imposed by the draft SEN Regulation 202X, including in the completion and submission of any necessary paperwork;

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<sup>2</sup> Draft regulation 23 (Assistance and Support to a child over compulsory school age exercising rights under Part II of the 1996 Order).

<sup>3</sup> Draft regulation 23 (2) and (3) (Assistance and Support to a child over compulsory school age exercising rights under Part II of the 1996 Order).



(e) provision of, or assistance with, representations permitted to be submitted to the EA; and

(f) accepting service of Notices.<sup>4</sup>

**Diagram 13:1: Who can Assist and Support a Young Person to Exercise their Rights in the SEN Framework**

A young person may appoint any or all of the following if they wish assistance and support in exercising their rights under Part II of the 1996 Order		
the young person's parent	a representative (who is required to be over age 18)	a solicitor, barrister or other legal representative

13.16 It is anticipated that in most instances, the young person will appoint their parent to provide that assistance and support. However, there may be circumstances when the young person wants someone other than their parent to provide assistance and support; or their parent is unwilling or unable to do so. A young person may be happy to proceed without assistance and support or only ask for it in certain circumstances. A young person does not have to appoint a person to assist and support them; it is their choice. Given the role of the PLP with regard to children with SEN, the PLP should be used to record if a young person has appointed the parent or otherwise to provide them with assistance and support. (See paragraph 3.82).

**Key point: It is anticipated that most young people will appoint their parent to assist and support them.**

<sup>4</sup> Draft regulation 23(4) (Assistance and Support to a child over compulsory school age exercising rights under Part II of the 1996 Order).

## **Capacity of the Young Person**

13.17 A key factor will be whether the child has the capacity to exercise their rights within the SEN Framework. The young person is not to be treated as lacking in capacity to exercise their rights on all matters affecting them, unless a question has been raised about the young person's capacity and it is established that the young person lacks capacity to do so.<sup>5</sup>

### **Who will Determine Whether a Young Person Lacks Capacity in the SEN Framework?**

13.18 The EA is responsible for making the determination of whether a young person lacks capacity to exercise rights within the SEN Framework in the event of a question being raised with them about that capacity.<sup>6</sup>

13.19 In the event of a question about the young person's capacity being raised with the EA, the EA will appoint a suitable person to make a determination. (See paragraph 13.21 which sets out those persons who can request such a determination). The person(s) appointed by the EA may meet with the young person and, the young person's parents and any other relevant persons to help make the determination.

13.20 For transparency and consistency the EA should make suitable arrangements, for those persons in paragraph 13.21, to request a determination as to a young person's capacity to exercise their rights under the SEN Framework and to act upon such requests. Such arrangements are required to take into consideration the requirements under the General Data Protection Regulations (GDPR) regarding the sharing of personal information. The EA should ensure that these arrangements operate consistently within Northern Ireland and that they are made known to young people and all those who can raise such a concern. This information, along with clear information regarding the rights of a young person,

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<sup>5</sup> Draft regulation 25(3) (Principles: capacity).

<sup>6</sup> Draft regulation 25(2) (Principles: capacity).

should be included with the EA's arrangements for the provision of advice and information.

### **Who can Request a Determination of a Young Person's Capacity?<sup>7</sup>**

13.21 Any of the following people can request a determination on whether a young person lacks capacity to exercise any of the rights within the SEN Framework:

- (a) the young person;
- (b) the parent of the young person;
- (c) the EA;
- (d) a responsible body (see Glossary);
- (e) the Tribunal;
- (f) a health care professional who has experience working with the young person in a professional capacity; or
- (g) a social worker who has experience working with the young person in a professional capacity.<sup>8</sup>

### **Principles: Capacity<sup>9</sup>**

13.22 The EA is required to comply with the principles set out in paragraph 13.34 where a determination as to a young person's capacity to exercise their rights has been requested. In the event of such a request, the EA is required to make that determination, as soon as is reasonably practicable. The EA's determination of the young person's capacity is required to be made in writing.<sup>10</sup>

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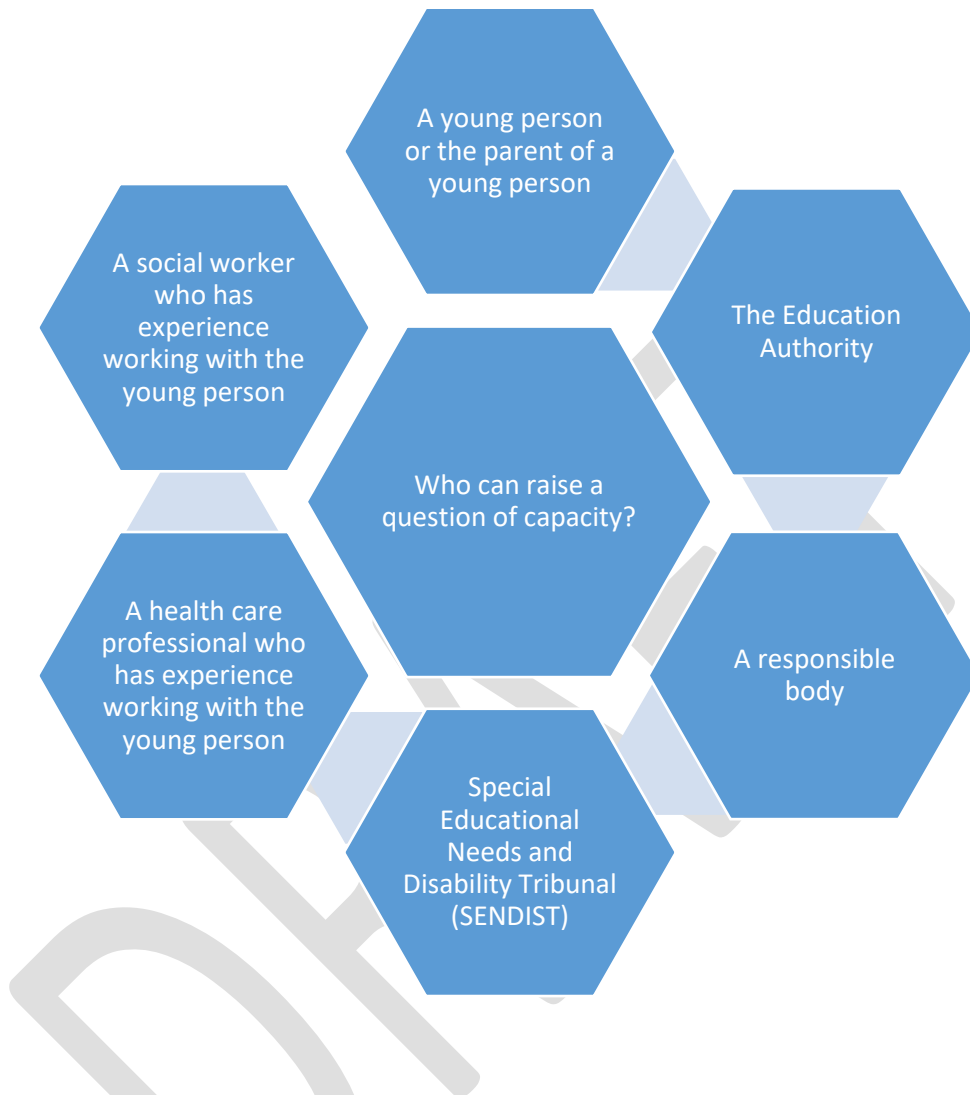
<sup>7</sup> Draft regulation 24 (Capacity Determination).

<sup>8</sup> Draft regulation 24(2) (Capacity Determination).

<sup>9</sup> Draft regulation 25 (Principles: capacity).

<sup>10</sup> Draft regulation 25(2) (Principles: capacity).

**Diagram 13.2: Who can raise a Question of Whether a Young Person Lacks Capacity to Exercise any Rights in Part II of the 1996 Order?**



13.23 A young person is not to be treated as **lacking that capacity** unless it is established that they lack capacity to exercise any of the rights in the SEN Framework.<sup>11</sup>

13.24 The principles which the EA is required to comply with specify that whether a young person is, or is not, able to make a decision about the matter, is to be determined solely by reference to whether the young person is, or is not, able to do the things mentioned in paragraph 13.29 (they are 'unable to make a decision').

<sup>11</sup> Draft regulation 25(3) (Principles: capacity).

13.25 A young person is not to be:

- Determined as lacking capacity merely on the basis of any condition that the young person has, or any other characteristic of the young person, which may lead others to make unjustified assumptions about the young person's ability to make a decision.<sup>12</sup>
- Treated as unable to make a decision about the matter unless all practicable help and support to enable the young person to make the decision has been given without success.<sup>13</sup> (See paragraph 13.32).

13.26 In addition, a young person is not to be determined as unable to make a decision about a matter because the young person makes an unwise decision.<sup>14</sup> The EA is required to comply with the above principles in making a determination once a question as to a young person's capacity has been raised.

13.27 The EA is to be taken to have sufficiently established that the young person lacks capacity in relation to the matter<sup>15</sup>, if the EA has:

- taken reasonable steps to establish whether a young person lacks capacity in relation to the matter;
- believes that the young person lacks capacity in relation to the matter concerned; and
- the EA has complied with the principles in paragraphs 13.22 and 13.26<sup>16</sup> and paragraphs 13.14 to 13.16 for "Supporting a person to make a decision". (Also see paragraph 13.32).

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<sup>12</sup> Draft regulation 25(4) (Principles: Capacity).

<sup>13</sup> Draft regulation 25(5) (Principles: Capacity).

<sup>14</sup> Draft regulation 25(6) (Principles: Capacity).

<sup>15</sup> Draft regulation 29 (Compliance with regulation 25(3)).

<sup>16</sup> Draft regulations 25(2) to (6) refer.

13.28 The EA should consistently apply its arrangements regarding the raising of a question of a young person's capacity and for providing its determination. (See paragraph 13.20). There is no right of appeal to the EA's determination of capacity, however, it is recommended good practice that the EA explains how it has reached its decision.

### **Meaning of "lacks capacity" (for the purpose of this Code of Practice)<sup>17</sup>**

A young person lacks capacity to exercise a right conferred ...if, at a **material time**, the young person is unable to make a decision, about the **matter**, because of an impairment of, or a disturbance in the functioning of, the mind or brain. It does not matter:

- a) whether the impairment or disturbance is permanent or temporary; or
- b) what the cause of the impairment or disturbance is.

In particular, it does not matter whether the impairment or disturbance is caused by a disorder or disability or otherwise than by a disorder or disability".

***Paraphrased from Draft regulation 26***

13.29 A young person is "unable to make a decision" within the SEN Framework, if the young person is **not able to:**

- (a) understand the **information relevant to the decision;**
- (b) retain that information for the time required to make the decision;
- (c) appreciate the relevance of that information and to use and weigh that information as part of the process of making the decision; or
- (d) communicate their decision (whether by talking, using sign language or any other means).<sup>18</sup>

<sup>17</sup> Draft regulation 26 (Meaning of "lacks capacity").

<sup>18</sup> Draft regulation 27(1) (Meaning of "unable to make a decision").

13.30 The term **information relevant to the decision** includes information about the reasonably foreseeable consequences of deciding one way or another; or failing to make a decision.<sup>19</sup> A young person is not to be regarded as not able to understand the information relevant to the decision if the young person is able to understand an **appropriate explanation** of the information.<sup>20</sup>

13.31 The term **appropriate explanation** means an explanation of the information given to the young person in a way appropriate to their circumstances (using simple language, visual aids and any other means).<sup>21</sup> The clarity of, and ease of access to, advice and information provided for young people to support them in exercising their rights within the SEN Framework is of utmost importance. (See Section 11).

### **Supporting the Young Person to Make a Decision<sup>22</sup>**

13.32 The young person is not to be regarded as having been given all practicable help and support to enable them to make a decision unless, in particular, the following steps have been taken so far as is reasonably practicable.<sup>23</sup> Those steps are:

- a) the provision to the young person, in a way appropriate to their circumstances, of all the **information** relevant to the decision, (or, where it is more likely to help the young person to make a decision, of an explanation of that information);
- b) ensuring that the matter in question is raised with the young person:
  - (i) at a time or times likely to help the young person make a decision;  
and
  - (ii) in an environment likely to help the young person make a decision; and

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<sup>19</sup> Draft regulation 27(2) (Meaning of “unable to make a decision”).

<sup>20</sup> Draft regulation 27(3) (Meaning of “unable to make a decision”).

<sup>21</sup> Draft regulation 27(4) (Meaning of “unable to make a decision”).

<sup>22</sup> Draft regulation 28 (Supporting a person to make a decision).

<sup>23</sup> Draft regulation 28(1) (Supporting a person to make a decision).

- c) ensuring that persons whose involvement is likely to help the young person to make a decision are involved in helping and supporting the young person.<sup>24</sup> This would include a person who a young person has appointed to provide assistance and support whose involvement is likely to help the young person to make a decision.<sup>25</sup>

13.33 The **information** referred to in paragraph 13.32(a), includes information about the reasonably foreseeable consequences of deciding one way or another; or failing to make a decision.<sup>26</sup> For the purpose of providing information or the explanation mentioned in paragraph 13.32(a), in a way appropriate to the young person's circumstances it may, in particular, be appropriate to:

- use simple language or visual aids; or
- provide support for the purpose of communicating the information or explanation.<sup>27</sup>

### **Where the EA Determine that a Young Person Lacks Capacity<sup>28</sup>**

13.34 Where the EA has determined that a young person lacks capacity to exercise a right or make a decision about a particular matter at a relevant time (lacks capacity), a young person's rights may be exercised by:

- **an alternative person**; or
- **a young person's parent** where a young person does not wish to have an alternative person.<sup>29</sup>

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<sup>24</sup> Draft regulation 28(2) (Supporting a person to make a decision).

<sup>25</sup> Draft regulation 28(5) (Supporting a person to make a decision).

<sup>26</sup> Draft regulation 28(3) (Supporting a person to make a decision).

<sup>27</sup> Draft regulation 28(4) (Supporting a person to make a decision).

<sup>28</sup> Draft regulation 30 (Children over compulsory school age determined to lack capacity to exercise a right conferred by Part II of the 1996 Order).

<sup>29</sup> Draft regulation 30(2) (Children over compulsory school age determined to lack capacity to exercise a right conferred by Part II of the 1996 Order).



13.35 The alternative person or the parent of the young person is required to satisfy themselves that in exercising a right or decision that it is in the young person's **best interests**.

### **Alternative Person**

13.36 There may be a circumstances where a young person has been determined to lack capacity, but they may nonetheless have the capacity to determine the discrete matter of the appointment of an alternative person. The alternative person is any person, other than a parent, aged 18 or over who has been appointed by the young person to exercise any of their rights within the SEN Framework.<sup>30</sup> Where the young person who lacks capacity does not wish to have an alternative person, the young person's rights may be exercised by the parent.<sup>31</sup>

13.37 "Alternative person" means (different things if the young person lacks capacity to determine the discrete matter of the appointment of an alternative person), namely one of the following will apply:

- a) Any controller appointed for the child under Article 101 of the Mental Health (Northern Ireland) Order 1986 to make a decision in relation to the exercise of any rights conferred on the child by Part II of the 1996 Order.
- b) Any deputy appointed by the High Court for the child under section 113(2)(a) of the Mental Capacity Act (Northern Ireland) 2016 (once operational) to make a decision in relation to the exercise of rights conferred on the young person by Part II of the 1996 Order.

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<sup>30</sup> Draft regulation 30(4)(a) (Children over compulsory school age determined to lack capacity to exercise a right conferred by Part II of the 1996 Order.

<sup>31</sup> Draft regulation 30(2)(b) (Children over compulsory school age determined to lack capacity to exercise a right conferred by Part II of the 1996 Order.

- c) Any attorney under lasting power of attorney (within the meaning of section 19 of the Mental Capacity Act (Northern Ireland) 2016) once operational) appointed by the child to make a decision on their behalf in relation to the exercise of rights conferred on the young person by Part II of the 1996 Order.
- d) Any attorney in whom an enduring power of attorney (under the meaning of Enduring Powers of Attorney (Northern Ireland) Order 1987) created by the child vested, where the power of attorney is registered in accordance with Articles 6 and 8 of that Order.<sup>32</sup>

**Key point: The alternative person or where the young person does not wish to have an alternative person, the parent, may exercise a young person's rights if the EA determine that the child lacks capacity to do so.**

### **Establishing What is in the Young Person's Best Interests<sup>33</sup>**

13.38 Where the alternative person or the young person's parent exercises the rights of a young person (acts on their behalf), the rights are required to be exercised or made in the young person's best interests.

13.39 The alternative person or the young person's parent, in making a determination as to what is in the best interests of the young person, is required not to make it merely on the basis of:

- the child's age or appearance; or

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<sup>32</sup> Draft regulation 30(4)(b) (Children over compulsory school age determined to lack capacity to exercise a right conferred by Part II of the 1996 Order).

<sup>33</sup> Draft regulation 31 (Best interests).

- any other characteristics of the young person, including any condition that the child has, which might lead others to make unjustified assumptions about what might be in the young person's best interests.<sup>34</sup>

13.40 An alternative person or the young person's parent is required to consider all the relevant circumstances about which they are aware it is reasonable to regard as relevant.<sup>35</sup> In so doing the alternative person or the young person's parent is required to consider whether it is likely that the young person will at some time have the capacity in relation to the matter in question and, if it appears likely that the young person will have the capacity, when that is likely to be.<sup>36</sup>

13.41 So far as is practicable the alternative person or the young person's parent is required to encourage and help the young person to participate as fully as possible in the determination of what would be in their best interests.<sup>37</sup> In addition the alternative person or parent, as far as reasonably ascertainable, is required to have special regard to the:

- young person's past and present wishes and feelings (and in particular, any relevant written statement made by the child (prior to becoming over compulsory school age) or as a young person in relation to the particular matter when the young person had capacity);
- beliefs and values that would be likely to influence the young person's decision, if they had capacity; and
- other factors that the young person would be likely to consider if able to do so.<sup>38</sup>

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<sup>34</sup> Draft regulation 31(2) (Best interests).

<sup>35</sup> Draft regulation 31(3) (Best interests).

<sup>36</sup> Draft regulation 31(4) (Best interests).

<sup>37</sup> Draft regulation 31(5) (Best interests).

<sup>38</sup> Draft regulation 31(6) (Best interests).

13.42 The alternative person or the young person's parent is required to so far as is reasonably practicable and appropriate to do so,<sup>39</sup> consult the **relevant people**, as set out below, about what would be in the young person's best interests, and in particular about those matters set out in paragraph 13.41 above. In so doing, the alternative person or, if applicable the young person's parent is required to take into account the views of those people (so far as ascertained from the consultation or otherwise) about what would be in the child's best interests and in particular about those matters. The relevant people with whom the alternative person or the young person's parent is required to consult and take into account their views include:

- (a) the parent of the young person (if the young person has appointed an alternative person);
- (b) anyone engaged in caring for the young person or interested in the young person's welfare;
- (c) the EA – for example, an officer of the EA who has had direct contact with the young person; and
- (d) the principal or proprietor of a school or Article 10(1) institution.<sup>40</sup>

13.43 In relation to any act or decision that is being considered, the alternative person or the young person's parent, is required to have regard to:

- whether the same purpose can be effectively achieved in a way that is less restrictive of the young person's rights; and
- whether failure to do the act is likely to result in harm to other persons with resulting harm to the young person.<sup>41</sup>

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<sup>39</sup> Draft regulation 31(7) (Best interests).

<sup>40</sup> Draft regulation 31(10) (Best interests).

<sup>41</sup> Draft regulation 31(8) and (9) (Best interests).

## **EA Arrangement for Fulfilling their Requirements with Regard to Young People**

13.44 The EA is required to ensure that it puts in place appropriate arrangements which are consistently applied across Northern Ireland to fulfil their statutory duties regarding young people. The EA should ensure that all practicable steps are taken to assist and support the young person to exercise their rights within the SEN Framework.

13.45 Post-primary schools or other institutions providing education to a young person should have regard to any guidance provided by the EA or DE with regard to their responsibilities towards young people.

DRAFT