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STATUTORY INSTRUMENTS

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**2015 No. 62**

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

**PART 5**

*Appropriate persons and detained persons lacking capacity*

**Where a child's parent lacks capacity**

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

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

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

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

**Where a young person lacks capacity**

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

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

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

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

- (a) references to a detained person in the regulations listed in Part 1 of the Schedule are to be read as references to both the detained person and the alternative person, and
  - (b) references to a detained person in the regulation listed in Part 2 of the Schedule are to be read as references to the alternative person instead of the detained person.
- (3) For the purposes of this regulation, "the alternative person" means—
- (a) a representative of the detained person;
  - (b) the detained person's parent, where the detained person does not have a representative;
  - (c) a representative of the detained person's parent, where the detained person's parent also lacks capacity at the relevant time and the young person does not have a representative.

## **Mental Capacity Act 2005**

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

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