



**TRANSITION TO ADULTHOOD –  
UNDERSTANDING YOUR LEGAL RIGHTS**

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# Overview

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- Education
- Social Care
- Health
- Mental Capacity and decision-making for young people

# Legal Framework

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- Children and Families Act 2014, Part 3
- The Care Act 2014
- The Children Act 1989 (as amended)
- Special Educational Needs and Disability Regulations 2014
- SEND Code of Practice: 0 to 25 years – Chapter 8
- Care and Support Statutory Guidance – Chapter 16

# Legal Rights of Young People

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- A 'young person' is a person over compulsory school age and under 25.
- Compulsory school age ends on the last Friday of June in the academic year in which they become 16.

# The Section 19 Principles

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In carrying out all their functions under the Act LAs must have regard to:

- The views, wishes and feelings of the child, young person or parent
- The importance of their full participation in decisions
- The importance of their being provided with the necessary information and support to participate
- The need to support the child or young person to achieve the best educational or other outcomes

# Education

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- Education should take the lead in transition planning
- Multi agency approach
- **Preparing for adulthood reviews** from Year 9 onwards:
  - Support to prepare for higher education and/or employment
  - Support to prepare for independent living – this should include ascertaining where the child or young person would like to live (it may be that they do not wish to move into independent living) and local housing options should be explained;

# Preparing for adulthood reviews

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- Support in maintaining good health – including effective planning for transition of health services;
- Support in participating in society – including mobility and transport and developing and maintaining relationships and friendships of transition to adult social and health services where necessary
- options and choices for next phase of education, e.g. invite representatives of post 16 institutions to review meetings
- views of child/young person must be sought and taken into account

# Preparing for adulthood reviews

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- Reviews should identify what support the child or young person requires to achieve the outcomes and aspirations specified in their EHC plan to prepare them for adult life.
- Support during this time should include access to:
- Independent Careers Advice
  - High Quality Study programmes
  - Pathways to employment – to include access to work-based learning such as apprenticeships, traineeships and supported internships
- Young people with EHC plans should have access to packages of support across five day weeks which should include a full package of provision and support across education, health and care and include activities such as volunteering or work experience.

# Maintaining EHC Plans

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- Section 45 Children and Families Act 2014.
- Local authority can only cease to maintain where:
  - No longer responsible for young person
  - No longer necessary for plan to be maintained
    - Where young person no longer requires the SEN provision specified in the plan
  - Where the young person is over 18 *“a local authority must have regard to whether the educational or training outcomes specified in the plan have been achieved”*
  - If decision is made to cease to maintain, a local authority must continue to maintain EHC Plan until appeal has been determined
- DfE Guidance – SEND: 19-25 year olds’ entitlement to EHC Plans, 21 February 2017

# Social care: transition assessments

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- Local authorities must carry out transition assessments where **significant benefit** for young person in doing so and **likely to have needs** care and support post 18
- ‘significant benefit’ to assess ‘at the point when their needs for care and support as an adult can be predicted reasonably confidently, but will also depend on a range of other factors’ including:
  - The stage reached at school and any upcoming exams;
  - Whether young person or carer wishes to enter further/higher education or training or to get a job
  - The time it may take to carry out an assessment and to plan and put in place the adult care and support
  - Relevant family circumstances and planned medical treatment

# Social care: the 18<sup>th</sup> birthday

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- Once the young person turns 18 the local authority has to decide whether or not to treatment transition assessment as an assessment of needs under the Care Act
- If not, the local authority must undertake a care needs assessment
- Section 66 enables an authority to continue providing support from children's services even though the young person has reached the age of 18.

# Social care: adult social care

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- The Care Act 2014 – 1 April 2015
- Adult Needs Assessment
- New Eligibility Criteria
- Care and Support Planning
- Rights of Carers
- Choice of accommodation

# Social care: EHC Plans

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- LAs should develop and publish local protocols for assessment which should set out how the needs of disabled children will be address in the assessment process and clarify how statutory social care assessments will be informed by and inform EHC needs assessments leading to an ECH plan (10.17 of Code)
- Where there is an EHC needs assessment, it should be a holistic assessment of the CYP's education, health and social care needs. EHC needs assessments should be combined with statutory assessments under section 17 where appropriate (10.18 of Code)
- Social care will be included in Section H of the EHC Plan

# Healthcare

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- Duties under NHS Act remain fundamentally the same for children and adults
- Department of Health, Transition: moving on well. A good practice guide for health professionals and their partners on transition planning for young people with complex health needs or a disability, 2008
  - need for health transition plan
  - Planning should start when child is 13
  - Regular review by MDT
- School should also prepare a health action plan towards end of secondary school education (Valuing people: a new strategy for learning disability for the 21st century)

# NHS Continuing healthcare

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- 2010 National Framework for Children and Young People's Continuing Care requires all CCGs:
  - be actively involved in development and oversight of transition planning processes;
  - ensure they are represented in all transition planning meetings for young people who may be eligible for CHC;
  - have systems in place to ensure that appropriate referrals are made when either organisation is supporting a young person who may have a need for services from the other agency on reaching adulthood.

# Healthcare: timetable for transition

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- Timetable for transition planning process (transition guidance):
  - at 14, identify young people for whom it is likely that adult NHS continuing healthcare will be necessary and notify the relevant CCG;
  - at 16, make a formal referral for screening to the relevant adult NHS continuing healthcare team;
  - by 17, decide eligibility for adult NHS continuing healthcare in principle, so that the CCG can:
  - by 18, commission an effective package of care.

# Mental Capacity Act 2005 - Principles

A person must be assumed to have capacity unless it is established that he lacks capacity.

A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.

A person is not to be treated as unable to make a decision merely because he makes an unwise decision

An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests

Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action

# Test for Capacity

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- **Section 2 MCA 2005:**
  - *A person lacks capacity in relation to a matter if ... he is unable to make a decision because of an impairment of, or a disturbance in, the functioning of the mind or brain*
- The test for whether a person is unable to make a decision:-
  - understand information relevant to a decision
  - retain that information
  - use or weigh up that information as part of the decision making process OR
  - communicate their decision

# Best Interest Decision-making

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- If a person lacks capacity to make a specific decision then a decision must be taken on their behalf and in their best interests.
- A framework for 'best interests' decision making existing under the Mental Capacity Act and the Code of Practice.
- LA/CCG is often the body coordinating these decisions – if there is a dispute then they will refer the matter to the Court of Protection to be resolved
- Important decisions can include:
  - Where to live;
  - What nature and level of care to receive;
  - Who to have contact with;
  - Managing financial and property affairs.

# Decision-making - Education

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The following decision-making rights are transferred from parents to young people:

- the right to request an assessment for an EHC plan (any time up to their 25th birthday)
- the right to make representations about the content of their EHC plan
- the right to request that a particular institution is named in their EHC plan
- the right to request a Personal Budget
- the right to appeal to the First-tier Tribunal (SEN and Disability)

- Parents, or other family members, can continue to support young people in making decisions, or act on their behalf, provided that the young person is happy for them to do so, and it is likely that parents will remain closely involved in the great majority of cases.
- A young person can ask a family member or friend to support them in any way they wish, including, for example, receiving correspondence on their behalf, filling in forms, attending meetings, making telephone calls and helping them to make decisions.
- However, the final decision rests with the young person.

- The right of young people to make a decision is subject to their capacity to do so as set out in the Mental Capacity Act 2005.
- Some young people, and possibly some parents, will not have the mental capacity to make certain decisions or express their views.
- Provision is made in the Children and Families Act (Section 80) to deal with this and Annex 1 to the Code of Practice provides further details.

- In cases where a person lacks mental capacity to make a particular decision, that decision will be taken by a representative on their behalf.
- The representative will be a deputy appointed by the Court of Protection, or a person who has a lasting or enduring power of attorney.
- In the case of a young person who does not have such a representative, the decision will be taken by the young person's parent. This is likely to be the case the majority of the time.

- Even where the young person lacks capacity, the local authority must still take account of the views of the young person as well as the representative in the following situations:
  - They must have regard to the views and wishes of a young person (Section 19)
  - They must consult young people when carrying out its duty to keep education and care provision for disabled children and young people and those with SEN under review (Section 27)

# Legal aid

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- Available to challenge education, health and social care and mental capacity / best interests decisions involving welfare issues
- Financial eligibility and merits test
- Whether it is parent or child's means will depend on type of case and level of funding and so always check with a legal aid solicitor
- Legal aid for SEN challenges - Civil Legal Advice service - 0845 345 4 345

# Sources of further information and advice

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- Irwin Mitchell's factsheets:  
<http://www.irwinmitchell.com/personal/protecting-your-rights/social-healthcare-law/the-children-and-families-act-2014/factsheets-and-template-letters>
- IPSEA <https://www.ipsea.org.uk/>
  - General Advice Line: 0800 018 4016
  - Tribunal Help Line: 0845 602 9579
- Contact a Family National SEN Advice Service
  - 0808 808 3555
- SOS SEN <http://www.sossen.org.uk/>
  - National Helpline: 020 8538 3731
- Local authority Information, Advice and Support Service

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