

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 3 - children and young people in England with special Educational Needs OR DISABILITIES

Supplementary

Section 80: Parents and young people lacking capacity

330. The section enables regulations to modify any statutory provision for the purpose of giving effect to this Part where the parent of a child, or the young person, lacks capacity at the relevant time. Examples of where modifications might be needed include requesting a school or post-16 institution to be named in the EHC plan, and taking part in mediation. “Lacking capacity” has the same meaning as in the Mental Capacity Act 2005. “Relevant time” means the time at which something is required or permitted to be done by or in relation to a child’s parent or young person. A representative is a deputy under the Mental Capacity Act, the person who has been given a lasting power of attorney or an attorney in whom an enduring power of attorney has been vested. Where a young person lacking capacity does not have a representative, the reference to young person should be read as the young person’s parent (or where that parent also lacks capacity, to that parent’s representative).
331. Regulations under the section may give a deputy under the Mental Capacity Act the power to take the relevant decisions, even where this requires the discharge of parental responsibility, which would otherwise not be permitted by that Act.

Section 81: Disapplication of Chapter 1 of Part 4 of EA 1996 in relation to children in England

332. This section provides for Chapter 1 of Part 4 of the Education Act 1996 to cease to apply in relation to children with special educational needs in the area of a local authority in England when these provisions are implemented. It will continue to apply in relation to Wales and children with SEN statements prepared by a local authority in Wales under that Chapter.