

*These notes refer to the Children and Families Act 2014
(c.6) which received Royal Assent on 13 March 2014*

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.