

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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

Special educational needs etc

Section 20: When a child or young person has special educational needs

162. A child or young person has special educational needs if they have a learning difficulty or disability which calls for special educational provision to be made for them.
163. Children and young people with special educational needs may require extra or different provision in relation to thinking and understanding, as a result of physical or sensory difficulties, emotional or behavioural difficulties, difficulties with speech and language or how they relate to and behave with other people. Disabled children and young people may require extra or different provision, for example, if they are less mobile than their peers and require additional or extra provision so they can access the same learning opportunities.
164. A child or young person does not have a learning difficulty or disability simply because the language in which they are (or will be) taught is different from the one they speak at home.
165. This section replicates the current definition of special educational needs in section 312 of the Education Act 1996 and the definition of a learning difficulty in section 15Z(6) and (7) of the Education Act 1996, applying a single definition to children and young people from birth to 25.
166. [Section 83](#) defines various terms:
- Young person is a person over compulsory school age¹ but under 25.
 - Child is a person who is not over compulsory school age: see section 579 of the Education Act 1996.
 - Mainstream schools are maintained schools and Academy schools that are not special schools. A maintained school is a community, foundation or voluntary school, or a community or foundation special school not established in a hospital.
 - Post-16 institution is any institution that provides education or training for those over compulsory school age, but which is not a school or within the higher education sector. Mainstream post-16 institutions are those which are not specially organised to make special educational provision for students with

¹ *Compulsory school age* has the meaning given by section 8 of the Education Act 1996. A person begins to be of compulsory school age when he attains the age of 5 on 31st March, 31st August or 31st December in any year, or where he attains the age of 5 on another date, he begins to be of compulsory school age on whichever of those dates comes next after his fifth birthday. He ceases to be of compulsory school age on the last Friday in June of the school year in which he attains the age of 16.

special educational needs, that is, further education colleges, sixth form colleges, 16-19 Academies and training providers. Special post-16 institutions are post-16 institutions that are specially organised to make special educational provision for students with special educational needs. They are not within the further education sector or 16-19 Academies and are currently often referred to as independent specialist providers or independent specialist colleges.

Section 21: Special educational provision, health care provision and social care provision

167. This section defines special educational provision, health care provision and social care provision.
168. Special educational provision is additional or different from that which would normally be provided for children or young people of the same age in mainstream schools or colleges, maintained nursery schools and places at which relevant early years education is provided. It might include support from a specialist teacher, access to a specialist teaching programme, specialist ICT equipment or a specialist job coach. For children under two it means educational provision of any kind.
169. Health care provision means provision of health care services provided as part of the NHS. These services may be provided by or on behalf of NHS bodies including by private providers. Social care provision is provision made by local authority social services. Health care provision or social care provision which educates or trains the child or young person is to be treated as special educational provision (rather than health care or social care provision). This reflects the precedents set by case law in relation to the current special educational needs legislation.
170. The section replicates, and replaces in England, the current definition of special educational provision in section 312 of the Education Act 1996 and applies it to young people over compulsory school age.
171. Relevant early years education is defined in the section as having the same meaning as under section 123 of the Schools Standards and Framework Act 1998, that is, free early years provision (as defined in section 20 of the Childcare Act 2006) which is provided under arrangements made by a local authority pursuant to section 7 of the Childcare Act 2006.