

Factsheet

Key Definitions under Part 3 of the Children and Families Act 2014

This factsheet aims to help you understand some of the key definitions under the new Act. It is important to note that many of the definitions, such as “special educational needs” have not changed under the new system. The requirement to have special educational needs remains the gateway to accessing support and services under Part 3 of the new Act.

It is essential that you understand the key legal definitions which will be applied:

- Special educational needs
- Special educational provision
- Disability
- Healthcare provision
- Social care provision
- Young person

Special educational needs

Section 20 of the Children and Families Act 2014 states that 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 him or her.

A child of compulsory school age or a young person has a learning difficulty or disability if he or she:

- has a significantly greater difficulty in learning than the majority of others of the same age, or
- has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in mainstream schools or mainstream post-16 institutions.

A child under compulsory school age has special educational needs if he or she is likely to fall within the definition above when they reach compulsory school age or would do so if special educational provision was not made for them.

Difficulties related solely to learning English as an additional language are not SEN. When identifying and assessing SEN for children and young people whose first language is not English, it is important to consider carefully whether any delays in learning or development are related to learning English as an additional language or if it arises from SEN or disability.

Special educational provision

Section 21 of the Act defines Special educational provision for children over two and young people as:

“educational or training provision that is additional to, or different from, that made generally for others of the same age in –

- mainstream schools in England,
- maintained nursery schools in England,
- mainstream post-16 institutions in England, or
- places in England at which relevant early years education is provided.

Special educational provision for a child aged under two means educational provision of any kind.

Disability

The definition of disability is set out in section 6(1) of Equality Act 2010, which states that a person (P) has a disability if:

- a) P has a physical or mental impairment, and
- b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Further detail in relation to this definition of disability is provided in schedule 1 to the EA 2010. Paragraph 6(1) of schedule 1 states 'Cancer, HIV infection and multiple sclerosis are each a disability'. This means that the person with one of these diagnosis is protected by the Act effectively from the point of diagnosis and does not have to demonstrate the impairment has a substantial and long term effect.

Healthcare and Social care provision

Section 21 defines Health care provision as the provision of health care services as part of the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006.

Social care provision means the provision made by a local authority in the exercise of its social services functions.

Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision). The terms 'educates' and 'trains' are not defined in the Act and so take their ordinary English meaning. Whether provision 'educates' or 'trains' a particular child will be decided on the facts of each individual case.

Young Person

Section 83 of the Act defines a "young person" as a person over compulsory school age but under 25.

The glossary to the SEND Code of Practice states that a child is of compulsory school age until the last Friday of June in the year in which they become 16, provided that their 16th birthday falls before the start of the next school year.

The distinction between a child and young person is important, as the Children and Families Act 2014 gives significant new rights directly to young people once they reach the end of compulsory school age. The SEND Code of Practice states that when a young person reaches the end of compulsory school age, local authorities and other agencies should normally engage directly with the young person rather than their parent, ensuring that as part of the planning process they identify the relevant people who should be involved and how to involve them.

Chapter 8 of the Code of Practice sets out in detail how some decision-making rights transfer from parents to young people at this stage and the role families will continue in supporting a young person with SEN. Most young people will continue to want, or need, their parents and other family members to remain involved in discussions and decisions about their future.

Under section 80 of the Children and Families Act and Regulations 64 and 65 of the SEN and Disability Regulations, the parent of a young person who lacks capacity (or their formal representative, if one has been appointed by the court) will be able to take decisions for that young person.

This gives parents a much greater level of control over certain decisions for young people than is set out under the Mental Capacity Act. Under the Mental Capacity Act 2005, where a young person lacks capacity, decisions are made in their 'best interests' which requires that parents are consulted and involved in decision making but do not have legal authority to make decisions on their behalf unless formally appointed as deputy.

Further information on decision-making and young people is set out in the 'preparing for adulthood' factsheet.