

Glossary and References

Understanding the Mental Capacity Act 2005 and the implications for young people and their families

Assessor	The person who does the capacity assessment with a young person who is thought to lack capacity to make the particular decision. For educational decisions, this may be a member of school or college staff, or a local authority officer.
‘Best interests’	Any decisions made, or anything done for a young person who lacks capacity to make specific decisions, must be in the young person’s ‘best interests’.
‘Best interests’ checklist	The checklist of things that whoever is making a particular decision on behalf of a young person who lacks capacity to make the decision must follow. It is set out in Chapter 5 of the Mental Capacity Act Code of Practice.
Capacity assessment	The two-stage assessment, set out in Chapter 4 of the Mental Capacity Act Code of Practice, which is undertaken when it is believed a young person lacks capacity to make a particular decision.
Code of Practice	A Code of Practice is the guidance the government publishes about how a particular law should work on a day-to-day basis. A Code of Practice explains in more detail what the law means and gives practical steps. People in certain roles or jobs have to follow a particular Code of Practice. These roles or jobs are set out in the Code of Practice.
Court of Protection	This is a specialist court for all issues relating to people who lack capacity to make a specific decision. www.justice.gov.uk/courts/rcj-rolls-building/court-of-protection

Decision Maker	The person making a particular decision on behalf of a young person who has been assessed as lacking capacity to make the particular decision. For decisions relating to the young person's education the Decision Maker will generally be the young person's parent (SEND COP Annex 1).
Deprivation of liberty	The young person is under continuous supervision and control and is not free to leave and the young person lacks capacity to consent to these arrangements.
Lack capacity	A young person will be considered to lack capacity if they have an impairment or disturbance of the mind or brain and the impairment or disturbance affects their ability to make the specific decision at the time needs to be made. Functionally, the young person is unable to do one or more of the four components of decision making (MCA COP 4.3)
Mental capacity	<p>The ability to make a decision – any decision, big or small.</p> <p>The MCA categorises decisions into three types:</p> <ul style="list-style-type: none">• every day: what to wear etc• more serious or significant: decisions with long term consequences carry risks• decisions with legal consequences: requesting a personal budget or bringing an appeal to the First-tier Tribunal (SEND) or
MCA	Mental Capacity Act 2005. This law is about people making decisions for themselves; it applies in England and Wales. The law assumes everyone can make their own decisions until it is proved they are not able to do so. It provides a statutory framework for people who lack capacity to make decisions for themselves, and how this is assessed. It sets out how decisions should be taken on behalf of someone who lacks capacity to make the decision.
Parent	Any person who is the young person's parent or has parental responsibility or cares for the young person.

Young person Someone aged 16 – 25 years old.
However, the definition in the SEND COP is someone who has reached the end of Y11 (last Friday in June) and is 16 years old.

References

Law Society (2015) *Identifying a deprivation of liberty: a practical guide*. Retrieved from www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty

Mental Capacity Act 2005 Code of Practice Retrieved from www.gov.uk/government/publications/mental-capacity-act-code-of-practice

Preparing for Adulthood (2015) *Factsheet: The Mental Capacity Act 2005 and supported decision making*. Retrieved from <http://preparingforadulthood.org.uk/resources/pfa-resources/pfa-factsheet-the-mental-capacity-act-2005-and-supported-decision-making>

Sinson, J.L. (2016) *'Applying the Mental Capacity Act 2005 in education: a practical guide for education professionals'* London: Jessica Kingsley Publishers

Sinson, J. (2015) *'No decision about my education without me. A guide for parents and carers helping young people (16-25 years).'* London: National Sensory Impairment Partnership (NatSIP) Retrieved from www.natsip.org.uk/index.php/doc-library-login/mental-capacity-act-2005-1/861-01-no-decision-about-my-education-without-me

Resources

Capacity Assessment Record form and guidance available from www.natsip.org.uk.
NatSIP is a DfE funded organisation to support the SEND reforms. To access the form you need to register with the website (free). The form can be found by clicking on Enter Document Library on the left hand menu near the top of the page. In the document library scroll down to the heading 'Mental Capacity Act 2005)