



**Law
Commission**
Reforming the law

Disabled children's social care

Consultation

Alex Ruck Keene KC (Hon)

- Consultation on disabled children’s social care. Runs from **8 October 2024** to **31 January 2025**.
- [Terms of reference available here](#). Deprivation of liberty not covered by project but [separate research paper available here](#).
- Consultation paper (in various formats) available at: <https://lawcom.gov.uk/project/disabled-childrens-social-care/>.
- Respond using the same link.
- Views sought from anyone with an interest in, or experience of, disabled children’s social care. In particular, children and young people, parents and carers, social workers and other local authority professionals.

Provisional proposals (views sought)

- Single express duty to assess the social care needs of disabled children.
- Requirement that assessments are proportionate and appropriate to the circumstances of the child and their family.
- Assessors should be required to have appropriate expertise/training.
- Statutory entitlement to copy of assessment.
- Guidance should require consideration of other relevant duties to assess/make inquiries.
- Single duty to assess needs of carer on request or where it appears carer may have needs for support. No distinction between “young” and other carers, or carers with/without parental responsibility.
- Well-being of parent or carer (s1 CA 2014) to be considered.

Open questions

- What is the appropriate threshold for carrying out an assessment?
 - where the child appears to be disabled;
 - where it appears the child may have needs for care and support;
 - where it appears the child may be eligible for care and support;
 - where the child is likely to be eligible for care and support; or
 - where it appears that a child may need care and support in addition to or instead of that provided by their family.
- How can we facilitate the combining of assessments undertaken for other purposes, such as EHC needs assessments? Eg a rebuttable presumption that assessments should be combined.
- Views/experiences sought on equivalent assessments (under MCA 2005) and delegation of assessments (possible under CA 2014).

Provisional proposals (views sought)

- A single statutory duty to meet the social care needs of disabled children (by providing services to child or their family).
- Duty should be subject to national eligibility criteria.
- Duty to encompass all services including short break provision.
- Children provided with short breaks in form of residential accommodation should have same benefits/safeguards as apply under section 20 Children Act 1989.
- Power to provide services: pending assessment; to meet non-eligible needs; & to provide services to parents and carers (and other family members) to promote or safeguard welfare of child.



Open questions

- Views sought on what the essential features of any national eligibility criteria should be.
- What residence criteria should apply? Ordinary residence, physical presence or something else?
- Can/should disabled facilities grants be brought under the single duty to meet eligible needs?

Provisional proposals (views sought)

- A non-exhaustive list of the social services that can be provided to disabled children.
- Services to be provided: directly; indirectly through third parties; and by means of direct payments.
- Right to a personal budget (as in SEND and ASC) to be introduced.
- Direct payments to be sufficient to cover cost of services (as in SEND), as opposed to amount estimated to be reasonable, and kept under review.
- Statutory entitlement to care plan setting out what, where, when and how services to be delivered.
- Plan to be combined with other plans (eg EHCP) where appropriate.



Open questions

- What are the principal social services (a) needed and (b) available for disabled children?
- What services should be included in non-exhaustive list?
- Views sought on current charging practices and whether they would be likely to change if proposals implemented.

Provisional proposals (views sought)

- Statutory codification of dividing line between health and social care for disabled children.
- Guidance to deal with respective responsibilities of NHS and social care, joint working and dispute resolution.
- Route to social care assessment under s117 MHA 1983 to be simplified.
- Introduction of statutory age at which planning for transition to adult services should commence.
- SEND Tribunal to have power to order social care assessment.

Open questions

- Is there scope for closer alignment between disabled children's social care law and SEND law?
- What age should planning for transition to adulthood start at?
- What (if any) methods are used to identify social care need in local authority areas (eg joint strategic needs assessment), ensure that sufficient services are available to meet those needs and keep sufficiency under review?
- View and experiences sought of sufficiency of social care provision in local authority areas.
- Views and experiences sought on joint working within/between LAs and NHS. What factors help/hinder co-operation?



Open questions

- Should all LAs be required to have a designated social care officer for SEND?
- Views sought on extending the powers and jurisdiction of the SEND Tribunal as a potential option to challenge and rectify decisions about disabled children's social care.
- Views sought on the more general question of what an effective and independent remedy to challenge decisions about disabled children's social care would be.

Provisional proposals (views sought)

- Definition of disability in CA 1989 to be updated to reflect EA 2010 definition. But without the exclusions contained in regulation 4 Equality Act 2010 (Disability) Regulations 2010 relating to challenging behaviour and addiction.
- Exercise of disabled children's social care functions should be subject to:
 - an overarching principle that the best interests of the child be the primary consideration for decision-makers;
 - a set of considerations to which decision-makers must have regard in applying that principle (see over); and
 - a final check, whether the purpose being served by the decision/ action can be as effectively achieved in a way which is less restrictive of the child's rights and freedom of action.



Provisional proposals (views sought)

- Considerations to which decision-makers should have regard:
 - the importance of promoting the upbringing of the child by the child's family;
 - the importance of the child participating as fully as possible in decisions;
 - the importance of the child being provided with the information and support necessary to enable participation;
 - the views, wishes and feelings of the child;
 - the views, wishes and feelings of the child's parents and carers and their knowledge of their child's condition and needs;
 - the need to support the child and their parent carers in order to facilitate the development of the child and to help them achieve the best possible outcomes;
 - the importance of preventing or delaying the development of the needs for care and support;
 - the need to prepare the child for adulthood and independent living; and
 - the characteristics, culture and beliefs of the child.

Provisional proposals (views sought)

- Children with ability to do so to have right to request assessment, make representations during assessment/planning process, opt-out of advocacy, and request direct payments and remedies.
- Ability to participate to depend on whether child has “capacity”, if over-16. Views sought on whether “competence” or the functional element of the “capacity” test more appropriate for under-16s.
- No right to refuse assessment where child at risk of abuse/neglect.
- Right to independent advocacy for children who would otherwise have difficulty in participating in assessment/planning process.
- Would not apply where there is already an appropriate person to perform this function or where child with ability to do so refuses.
- Analogous advocacy provision for parents and carers.



Open questions

- Views sought on whether the definition of “substantial and long term” under EA 2010 model of disability (which is applied differently for children under 6) requires further adaptation for younger children in the context of disabled children’s social care law.
- Views sought on efficacy of s1 CA 2014.
- Views sought on current advocacy provisions under CA 1989 and availability of advocacy during assessment process.
- Experiences sought of culturally competent advocacy.



Provisional proposals (views sought)

- A new legal framework for disabled children's social care, taking disabled children out of the scope of s17 CA 1989.
- To be accompanied by dedicated guidance for parents and carers and dedicated guidance for local authorities.



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Respond / get in touch:

<https://lawcom.gov.uk/project/disabled-childrens-social-care/>

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Responses by **31 January 2025**