



Disabled Children's Social Care – Briefing #1

The Law Commission's review

About this briefing

This is one of a series of briefings written by the Council for Disabled Children and Research in Practice. These have been developed to help practice leaders and service managers promote greater understanding across the children's workforce of the complex and often confusing legal and policy landscape around disabled children's social care.

They accompany the resource [Using a needs-led eligibility framework to provide services to disabled children and families](#) (June 2024).

Introduction

In October 2023, the Law Commission¹ announced that it was launching a comprehensive review of the legal framework governing the provision of social care support for disabled children and their families (Law Commission, 2023b).

The law on children's social care in England is governed by a patchwork of legislation, some dates back more than five decades. This has contributed to variation in the amount and quality of support provided by local authorities, and unnecessarily complicated routes to accessing support for the parents and care givers of disabled children. (Law Commission, 2023b)

Background to the review

The Law Commission had been asked to undertake the review by the Department for Education as part of the government's formal response (Department for Education, 2023b p. 26) to the Independent Review of Children's Social Care (IRCSC), which published its final report in May 2022 (MacAlister, 2022).

The IRCSC had heard from many families of disabled children who were struggling to understand what support they were entitled to or how to access that support. Many families reported that support was only offered once a family had reached 'crisis point' (MacAlister, 2022, p. 29). The IRCSC concluded:

An important part of making it clearer for families what support will be provided will be looking at the outdated legal framework for the social care of disabled children. At present there is a patchwork of duties that sit between the Children Act 1989, the Chronically Sick and Disabled Persons Act 1970, and the Children and Families Act 2014; outdated definitions that exist in some legislation; and poor alignment with the Care Act 2014. All of this works together to make it hard for families and professionals to understand what support they should receive. We therefore recommend that the Law Commission undertakes a review of children's social care disability legislation to bring more coherence to the existing patchwork of legislation. (MacAlister, 2022, p. 60)

¹ The Law Commission is an independent statutory body that was created by the Law Commissions Act 1965 to keep the law of England and Wales under regular review and to make recommendations to government for any necessary reforms. Its fundamental aim is to ensure that the law is fair, modern, simple and cost-effective. <https://lawcom.gov.uk/>

Terms of reference

The overarching aim of the Law Commission's review is to 'simplify and strengthen' the law and ensure that the system is 'fair' and works for children, families and local authorities (Law Commission, 2023a).

The government has asked the Law Commission to:

- > Make recommendations on how best to simplify and modernise the law governing disabled children's social care:
 - > With a view also to promoting clarity and consistency of understanding about disabled children's and families' entitlements to support.
 - > As part of the modernisation, to review the outdated language and definitions underpinning the law.
- > Consider whether current duties – in particular, the inclusion of disabled children as children in need under section 17 of the Children Act 1989 – are sufficient to meet the needs of disabled children and their families.
- > Consider how legislation that relates directly to disabled children aligns with other legislation relating to social care, special educational needs and children's rights more generally. (Law Commission, 2023b, 2023c)

Timescale

Hopefully, the Law Commission's review will pave the way for lasting improvements and equitable solutions to many of the problems associated with the delivery of social care support to disabled children and their families that have been identified by researchers and highlighted by the IRCSC (see Briefing #2 'Families' experiences of social care').

The review is unlikely to offer a quick fix, however. The Law Commission began preliminary work in late 2023 with a view to publishing a consultation in autumn 2024. The Law Commission is scheduled to submit a final report to ministers by the end of 2025 (Department for Education, 2023a).

Implementation of the Law Commission's recommendations will require changes to primary legislation, which means it is likely to be some years before the law can be successfully overhauled and fully modernised.

In the meantime, local authorities, their partner agencies and practitioners in social care and other children's services will have to work within the current legal framework to try to address the longstanding problems highlighted by the IRCSC.

Key points

- > The government has asked the Law Commission to undertake a wholesale review of the law governing disabled children's social care. The aim is to simplify and modernise the law so it creates a fairer system for children and families.
- > The current legal framework is a complex patchwork of legislation, some more than 50 years old. This has led to widespread confusion as to what support disabled children are entitled to and significant variations in levels of support.
- > The Law Commission is due to report to ministers by the end of 2025. However, implementation of its recommendations will require primary legislation, so it is likely to be some years before the law can be successfully modernised.

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