



Disabled Children's Social Care – Briefing #7

**How does the law define
'disabled' in relation
to children?**

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

Under section 17(10) of the *Children Act 1989*, all disabled children are automatically children 'in need'. This means that unlike other children, a disabled child faces no additional requirement to meet the definition of a child 'in need'. Local authorities have a statutory duty to assess the support needs of all children 'in need'.

Definition of disabled under *Children Act 1989*

A definition of 'disabled' is set out in section 17(11) of the *Children Act 1989*. For the purposes of the Act:

... a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; ...

'development' means physical, intellectual, emotional, social or behavioural development; and

'health' means physical or mental health. (Section 17(11) Children Act 1989)

As Broach and Clements have noted in their disabled children's legal handbook, this definition is rather 'outdated' and 'excessively medical' (Broach & Clements, 2020, p. 88). As part of its brief to modernise the law around disabled children's social care, the Law Commission (2023a) has been specifically asked by the government to review all outdated definitions and language that underpin the current law (see briefing #1 'The Law Commission's review').¹

¹ The review will also consider 'whether existing duties (specifically the inclusion of disabled children as children in need under section 17 of the *Children Act 1989*) and accompanying statutory guidance sufficiently meet the specific needs of disabled children and their families' (Law Commission, 2023b).

A 'broad definition'

However, Broach and Clements note that the definition in section 17(11) is also very broad. For families of disabled children, a broad definition comes with a practical advantage (Broach and Clements, 2020, p. 88): it means that many children will fall within its scope and be entitled to an assessment of their need for support. This includes children with neurodevelopmental conditions, for example.

... the phrase 'mental disorder of any kind' encompasses a wide range of conditions, including Asperger syndrome/high-functioning autism, ADHD [attention-deficit hyperactivity disorder] and ADD [attention deficit disorder] as well as impairments such as learning disability, mental illness and personality disorder. All such conditions fall within Mental Health Act 1983 s1(2), which defines 'mental disorder' as including 'any disorder or disability of the mind'. (Broach & Clements, 2020, p. 88)

Equality Act 2010

Broach and Clements go on to say that a 'mental disorder' will generally count as a disability within the definition set out at section 6 of the *Equality Act 2010*.

Disability is a protected characteristic under the *Equality Act 2010*. This means that any difference in treatment of a child who is disabled is liable to be challenged as unlawful disability discrimination. (p. 88)

Under section 6(1) of the *Equality Act 2010*, a person has a disability if they have 'a physical or mental impairment' and that impairment 'has a substantial and long-term adverse effect' on the person's 'ability to carry out normal day-to-day activities'.

This is a deliberately broad definition, and there is no need for a medical diagnosis – what matters is the effect of an impairment, not its cause so that in many cases it will be possible to consider the effects of an impairment (the substantial adverse effect) and to infer from that, that there is an impairment. (Broach & Clements, 2020, p. 394)

Diagnosis

Many disabled children will have a medical diagnosis before their needs for social care support are assessed, but this is not a requirement under the law (Broach and Clements, 2020, p. 89). The *Children Act 1989* does not specify that a child must have a formal diagnosis of a disability to be considered disabled.

Research evidence suggests confusion in this area is common. For example, following a freedom of information request to English local authorities in 2019, analysis by researchers at the University of Leeds found that at least 41 local authorities² had adopted eligibility policies that effectively excluded autistic children from an assessment by the children with disabilities team unless the child had a formal diagnosis or another disability (Bahri et al., 2020).

Other researchers have also highlighted the difficulties families commonly face in having their needs assessed (see Briefing #2 'Families experiences of social care'). For example, one in four parents surveyed by the Disabled Children's Partnership (2023, p. 3) had been told that their disabled child didn't meet the threshold for a social care assessment to take place.

² Although all 149 local authorities replied, researchers considered that only 93 had 'functional' eligibility policies: 41 of those 93 (44%) 'specified that children with autism would only be eligible for an assessment/support if they also met an additional requirement' (Bahri et al., 2020, p. 15).

Key points

- > Under section 17 of the *Children Act 1989*, all disabled children are automatically children 'in need'. The definition of 'disabled' under section 17 is rather outdated and medical, but it is also very broad. This means many children will come within its scope, including those with neurodevelopmental conditions.
- > *The Children Act 1989* does not require a child to have a formal diagnosis to be considered disabled. Researchers have found that practitioners are often confused on this point.
- > A 2019 study found that many local authorities had adopted policies that excluded autistic children from support unless they had a formal diagnosis. Parents have also reported being told that their disabled child didn't meet the threshold for an assessment.

References

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