

**Children with disabilities:
Chronically Sick and Disabled Person's Policy**

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Purpose of document:	The document provides information on how disabled children will be assessed, how we link the CSDPA to the statutory requirement to consider disabled children as 'children in need', and to ensure that the CSDPA is appropriately considered, applied and implemented.
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What other documents should this be read in conjunction with:	

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1. Our Children with Disabilities: Chronically Sick and Disabled Person's Policy

1.1 This document is the Peterborough City Council policy for specialist social care services for disabled children in Peterborough.

1.2 The document sets out to inform practitioners on how disabled children will be assessed, how we link the CSDPA to the statutory requirement to consider disabled children as 'children in need', and to ensure that the CSDPA is appropriately considered, applied and implemented.

1.3 This document does not fully interpret the whole legal framework of the CSDPA; if there is any uncertainty about how the CSDPA should be applied, then advice must be sought from the Council's Legal department

2. Definitions

Child in need

2.1 The definition of 'children in need' is to be found at CA 1989 s17(10), which provides that a child is to be taken as 'in need' if:

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority; or
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled.

2.2 In the absence of any confirmed diagnosis, a child may still be a 'child in need' by virtue of requiring services for the reasons specified in section 17(10)(a) or (b). Moreover, any insistence on a medical diagnosis by a children's services authority before a child is deemed to be 'disabled' within section 17(10)(c) might be considered anomalous given the professed universal social work commitment to the 'social model' of disability. In any event, there is a low threshold for social care assessments, which should be carried out if a child may be 'in need' (one of the potential outcomes of the assessment being a decision that he or she is not in fact 'in need').

Disability

2.3 At subsection (11) the definition of 'disabled' for the purposes of CA 1989 Part III is given as follows:

For the purposes of this Part, 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.

2.4 This definition is closely related to the definition of a disabled adult in the National Assistance Act 1948 s29. It is outdated and excessively medical in its approach; however, it has the practical advantage of being extremely broad. In particular, the phrase 'mental

disorder of any kind' encompasses a wide range of conditions, including Asperger syndrome/high-functioning autism, attention deficit hyperactivity disorder (ADHD) and attention deficit disorder (ADD) as well as impairments such as learning disability, mental illness and personality disorder. All such conditions fall within the Mental Health Act 1983 s1(2), which defines 'mental disorder' as including 'any disorder or disability of mind'. Additionally, a mental disorder will generally amount to a disability within the definition in the Equality Act 2000 s6,5 and accordingly any difference in treatment of such persons will be liable to challenge as unlawful disability discrimination.

3. Legal framework

3.1 The provision of social care services is governed by law. That law consists of primary and secondary legislation (i.e. Acts of Parliament and Rules and Regulations) together with government guidance which must be followed by local authorities save in exceptional circumstances.

In some cases local authorities have a duty to act which means that they must do so; in others they have a power to act, i.e. the law enables them to do something, but it is discretionary.

3.2 The key legislation governing the provision of additional services to disabled children is the Children Act (CA) 1989 (in particular Part III, 'Local authority support for children and families') and the Chronically Sick and Disabled Persons Act (CSDPA) 1970.

3.3 The **Chronically Sick and Disabled Persons Act (CSDPA) 1970** places a specific duty on local authorities to provide the support which a disabled child is assessed as needing when it comes within the scope of the CSDPA. This will include arrangements for/or the provision of assistance (including equipment) for an eligible disabled child for adaptations to their home to secure greater safety, comfort or convenience. Such assessments are usually undertaken by the child's Occupational Therapist (OT) on behalf of Children's Services.

3.4 There is no age distinction under the CSDPA so it applies equally to adults and children. The **National Service Framework (NSF)** also relates to Disabled Children and devotes one of its themes to 'Equipment and Adaptations' subsequently this also sets a number of standards;

- 'Disabled children and young people should have the equipment and housing they need for their health, well-being, development and social inclusion; and for their families' health and well-being;
- Disabled children and young people should have access to the equipment they need in all the settings in which they find themselves.

3.5 The Chronically Sick and Disabled Persons Act 1970 establishes the duty to provide most of the services which disabled children will need.

3.6 The Children Act 1989 establishes the assessment duty and also requires the provision of certain specific services, particularly residential and foster care short breaks. Assessments made under CA 1989 should also determine whether a child is eligible for support under CSDPA 1970. The Children Act 1989 s17(1) creates a general duty on children's services authorities to safeguard and promote the welfare of children within their area who are 'in need'. So far as is consistent with this duty, children's services authorities must promote the upbringing of such children by their families. Children's services authorities are empowered to provide 'a range and level of services' to meet the needs of 'children in need'. The work of authorities under CA 1989 Part III should be directed at (among other things) avoiding the need for care proceedings under CA 1989 Part IV by providing effective family support.

4. Local framework

5. Overview of Chronically Sick and Disabled Persons Act 1970 with reference to the Children Act 1989

5.1 Section 2 CSDPA 1970 - Provision of welfare services

Section 2 CSDPA 1970 provides a list of services that local authorities must provide to disabled children. The list can be summarised as follows:

- Practical assistance in the home;
- Provision (or assistance to obtain) radio, TV, library or other recreational services;
- Provision of lectures, games, outings, recreational or educational activities outside the home;
- Provision of services or assistance in obtaining travel to and from the home to participate in any of the activities mentioned;
- Assistance in arranging adaptations or provision of additional facilities to promote "*safety, comfort or convenience*";
- Facilitating the taking of holidays;
- Provision of meals in the home or elsewhere;
- Assistance in obtaining a phone and any special equipment necessary to use it.

5.2 The CSDPA forms the basis for the provision of a whole range of services including:

- Home based short breaks such as a sitting service;
- Support to access the community such as after-school clubs or play schemes. This includes community based short break services, such as linking;
- Assistance with travel to access the community;
- Help with adaptations to the home and equipment to secure "safety, comfort or convenience";
- Help with the costs, or provision, of holidays, meals and/or telephones.

. As the CSDPA is vague in specifying "assistance", it is not necessarily the case that a local authority must pay for the rental and installation of a telephone, for example.

5.3 There are some services that disabled children and their families need that do not fall within the wide range of services provided for in the CSDPA. One of those is the provision of accommodation for children placed away from their family home for which a power is expressly provided for by S.17 (6) and S.20 (4) of the Children's Act (CA) 1989. In particular the provision of residential and fostering short breaks.

5.4 The CA 1989 remains the statutory framework underpinning the local authority's responsibilities and involvement with all children and their families. Disabled children can and should access services through Part III of the CA 1989.

5.5 All disabled children are children 'in need' for the purposes of section 17 of the CA 1989.

The duty on local authorities under S17 of the CA 1989 is to provide a range and level of support services for children in need in their area, where possible to support them in the context of their families.

All work with disabled children and their families in the context of the CA 1989 should be based on the following principles:

- The welfare of the child should be safeguarded and promoted by the provision of services;
- A primary aim should be to promote access for all children to the same range of services;
- Disabled children are children first;
- Recognition of the importance of the parent and families in children's lives;
- Partnership between parents and carers and local authorities and other agencies.

5.6 The views of children and parents should be sought and taken into account.

5.7 A 2009 High Court case R (JL) v Islington LBC confirmed that residential and other overnight short breaks could not be provided under S.2 of the CSDPA 1970. Usually they would be provided for under S.17 (6) or S.20 (4) of the CA 1989.

6. How to Apply this in Practice

6.1 In order to decide whether or not to provide services to a disabled child, Children's Services must carry out a Child and Family assessment. The aim of the assessment is to ascertain the needs of the disabled child and his/her family.

6.2 Although the CA 1989 does not specifically state that disabled children have a right to an assessment, the Courts have held that there is a public law duty on Local Authorities to carry out an assessment. Disabled children should therefore be assessed under the CA 1989 even if any services they subsequently receive are given under other community care statutes such as the CSDPA 1970.

The Local Authority should also have due regard to their duties under the Equalities Act 2010 in reaching this decision.

6.3 The government guidance Framework for Assessment of Children in Need and their Families directs Children's Services to undertake assessments "in an open way and should involve those caring for the child, the child and other significant persons". The particular needs of the child must be taken into account - that is in relation to health, development, disability, education, religion, racial origin, and cultural and linguistic background".

6.4 Assessments should:

- be needs-led rather than dictated by available provision
- the assessment process should identify first, in consultation with all the children and adults concerned, the barriers that inhibit the child and family living an ordinary life and second, what can be done by the support agencies to tackle them
- take account of the needs of the whole family and individuals within it; while some services may be provided directly to a disabled child, others may be offered to parents or siblings
- be outcome focussed (together with the child, and family, desired outcomes should be identified, and the provision should help to meet these outcomes)
- be undertaken and provision put in place promptly and children and their families should not have to wait for essential services
- not be seen as a one-off event but should be repeated as required, while avoiding the burden that unnecessary repetitious assessments impose on families

6.5 Section.2 of the CSDPA states that if a local authority is satisfied through assessment that it is necessary to make arrangements for amongst other matters, the provision of practical assistance in the family home to meet those assessed needs of the disabled child, the local authority is under a specific duty to make those arrangements.

6.6 The local authority cannot delay or streamline those services for financial reasons. If those services are not available for whatever reason, the local authority must provide a suitable substitute service in the interim, while urgent steps are taken to commission the identified service required.

6.7 Reference should always be made to the relevant case law summaries.

6.8 Direct Payments can be used by a family to pay for the services, but the Direct Payment must be sufficient to cover the cost of that service. A local authority cannot insist that a family has a Direct Payment.

If a parent or carer as a result of their own disability has their own social care needs then a referral should be made to Adults Services to assess their needs as a disabled person and parent.

6.9 In addition, The Children and Families Act 2014 places a duty on local authorities to undertake a parent carers needs assessment (see Parent Carers Needs Assessment Policy).

7. Disability Register

Under CSDPA the local authority must also find out:

- How many chronically sick and disabled people there are in the area;
- Who they are;
- What help it can give them.

This duty is fulfilled by the provision of a disability register. Parents may register their disabled child by following this link:

<https://www.peterborough.gov.uk/residents/special-educational-needs/>.

8. Social Care Complaints

Children/young people and their parents can make a complaint about any aspect of the process. Information about the complaints process should be provided on request. Any member of staff contacted about a complaint should take the details of the complaint and notify the line manager and the Complaints Team, which can also provide advice and support in dealing with complaints.

The Complaints Service can be contacted:

The Central Complaints Office, Customer Services Centre, Bayard Place, Broadway,
Peterborough, PE1 1FZ

Telephone: 01733 296331

Fax: 01733 345090

Email: childrensocialcarecomplaints@peterborough.gov.uk