Title: Disabled Children's Social Care consultation paper
IA No: LAWCOM0083

RPC Reference No:

Lead department or agency: Law Commission

Other departments or agencies: Department for Education

Draft Impact Assessment (IA)

Date:08/10/2024

Stage: Development/Options

Source of intervention: Domestic

Type of measure: Primary legislation

Contact for enquiries:
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Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

This is a draft impact assessment to accompany the Law Commission's Disabled Children's Social Care: Consultation Paper (consultation paper number 265): see Chapter 2 of the consultation paper. The analysis in this document is provisional and consultees' views are sought on all estimates and assumptions. Areas where there is particular uncertainty/risk in the estimates or assumptions owing to lack of data or otherwise are highlighted with a specific invitation for consultees to provide their views. Views on the consultation paper can be provided in response to consultation question 1 at https://consult.justice.gov.uk/law-commission/disabled-childrens-social-care/.

Cost of Preferred (or more likely) Option (in 2023 prices)

Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
£176.31m	£m	£m	Qualifying provision

What is the problem under consideration? Why is government action or intervention necessary?

The law on disabled children's social care in England dates back more than five decades. Elements of the legal framework are out of date. It is overly complex and results in inconsistent provision whereby the needs of a disabled child may be met in one area but not another. Parents and carers have also reported to us that safeguarding and child protection are prioritised over identifying and meeting the needs of disabled children. The framework is statutory and so statutory intervention is required to deal with problems arising from it.

What are the policy objectives of the action or intervention and the intended effects?

The policy objectives of the provisional proposals set out in the consultation paper are simplification and modernisation of the law, providing a clearer framework for local authorities and families to work with, and the elimination of anomalies and unjustified inconsistencies. Pursuit of these objectives is intended to contribute to an overarching objective of developing a legal framework that sufficiently meets the specific needs of disabled children and their families.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 – Do nothing.
Option 1 – Full implementation of the provisional proposals with a statutory duty to assess social care needs of disabled child where 'it appears the child may have needs for care and support'.
Option 2 – Full implementation of the provisional proposals with a statutory duty to assess social care needs of disabled child where 'the child is likely to be eligible for care and support'.
Option 3 – Simplification and modernisation of legal framework with no substantive changes to duties, rights and processes.
Option 1 is preferred as it best achieves the policy objectives set out above: we anticipate an error rate in Option 2 (see below) which may result in the eligible needs of some disabled children being overlooked. We invite consultees' views on this.

Does implementation go beyond minimum EU requirements?	Yes / No / N/A
Is this measure likely to impact on international trade and investment?	Yes / No

Are any of these organisations in scope?		**Micro** Yes/No	**Small** Yes/No	**Medium** Yes/No	**Large** Yes/No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**		**Non-traded:**
Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year					

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: ______________ Date: ______________

Summary: Analysis & Evidence

Policy Option 1

Description: Full implementation of proposals with an assessment threshold where ‘it appears the child may have needs for care and support’

FULL ECONOMIC ASSESSMENT[1]

Price Base Year 2023	**PV Base Year** 2023	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: 121.83	**High: 296.35**	**Best Estimate:** 176.31

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	1.22	2	13.09	**111.26**
High	5.65		49.61	**423.70**
Best Estimate	3.96		30.35	**260.20**

Description and scale of key monetised costs by ‘main affected groups’

Transitional Costs. Familiarisation with, and training on, new legal framework for all social workers working with disabled children/families: £2.5 million per year for two years. Specialist disability training for smaller cohort of social workers in each local authority to develop expertise in assessment of disabled children: £1.45 million per year over two years.
Ongoing costs. Increased number of social care assessments: £13.95 million per year. Increased expenditure on support for children and families following the rise in assessments: £16.40 million per year.

Other key non-monetised costs by ‘main affected groups’

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	0	0	27.83	**233.09**
High	0		84.41	**720.04**
Best Estimate	0		51.61	**436.51**

Description and scale of key monetised benefits by ‘main affected groups’

Transitional benefits. None identified.
Ongoing benefits. Timely identification of needs of disabled child means that needs can be met at an earlier stage, reducing the likelihood of escalation and resulting, in the long term in a small proportion of cases, in a reduction in the need for residential care: £43.56 million per year saved. Parents and carers experience a permanent improvement in well-being relating to the reduction in stress and anxiety of providing care without assistance and/or struggling to obtain the care their child requires: £8.05 million per year.

Other key non-monetised benefits by ‘main affected groups’

Ongoing benefits. Improvement in child and sibling well-being. This has not been monetised, but we expect the improvement in child well-being to be significant. Potential improvement in local authority staff well-being arising from working with a more efficient, user-friendly legal framework and provision of early support reducing instances where needs of children they are working with escalate.

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[1] All indicated costs are at the central estimate.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5[2]

The working assumptions are as follows.

(i) The (provisionally) proposed framework will result in needs being met at an earlier stage as a result of:
  (a) entitlements being clearer so parents and carers know what child may be eligible for and how to get it;
  (b) a simpler legal framework being easier/quicker to apply;
  (c) assessments being carried out at an early stage, where the law requires it (not currently the case), ensuring needs are identified before they escalate;
  (d) advocacy to help children and families make the case for their entitlements;
  (e) national eligibility criteria ensuring high needs cases are not excluded.
  (f) guiding principle that prevention of escalation of needs should be considered.

(ii) There will be an increase in service provision resulting from more assessments being carried out and needs identified.

(iii) The extent of the increase in service provision is contingent on the eligibility criteria which are adopted. This is a matter for future discussion between central and local government and is an unknown. The increase shown in this analysis (between 10-30%) is for illustrative purposes only to show the potential costs/benefits depending on whether criteria are adopted which reflect the current 'national average' (i.e. maintaining the status quo in many authorities but requiring an increase in provision in other authorities) or whether more generous criteria are adopted requiring an increase in provision across more local authorities. Current eligibility criteria are being sought from local authority stakeholders as part of the consultation and we invite consultees' views on the potential for increase in service provision.

(iv) There will be an increase in parent and carer well-being arising from the increase in services provision which we measure using a WELLBY (see below).

(v) A WELLBY delivers a permanent improvement in well-being to parents and carers.

(vi) The number of additional children requiring assessments are sufficiently captured by comparison between the Children in Need and SEND data. This is discussed further below in the evidence section. But we note there is a risk that we have underestimated the number of new assessments required. We invite consultees' views on this.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:**	**Net:**	

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[2] 1.5% discount rate applied to WELLBYs.

Summary: Analysis & Evidence

Policy Option 2

Description: Full implementation of proposals with an assessment threshold where 'the child is likely to be eligible for care and support'.

FULL ECONOMIC ASSESSMENT[1]

Price Base Year 2023	**PV Base Year** 2023	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: 28.77	**High: 215.57**	**Best Estimate:** 90.74

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	1.22	2	10.77	**91.97**
High	10.86		40.12	**355.01**
Best Estimate	3.96		25.00	**215.70**

Description and scale of key monetised costs by 'main affected groups'

Transitional Costs. Familiarisation with, and training on, new legal framework for all social workers working with disabled children/families: £2.5 million per year for two years. Specialist disability training for smaller cohort of social workers in each local authority to develop expertise in assessment of disabled children: £1.45 million per year over two years.
Ongoing costs: Increased number of social care assessments (less than Option 1 because of higher assessment threshold) but with associated triage[2] cost to evaluate whether child qualifies for assessment: £8.24 million per year. Increased expenditure on the support for children and families following the rise in assessments: £14.45 million per year. Costs incurred by the local authorities in legal disputes over whether children qualify for assessment: £2.31 million per year.

Other key non-monetised costs by 'main affected groups'

Similar to Option 1.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	0	0	14.37	**120.74**
High	0		66.62	**570.59**
Best Estimate	0		36.08	**306.44**

Description and scale of key monetised benefits by 'main affected groups'

Transitional benefits. None identified.
Ongoing benefits. Timely identification of needs of disabled child means that needs can be met at an earlier stage, reducing the likelihood of escalation and resulting, in the long term in a small proportion of cases, in a reduction in the need for residential care: £29.04 million per year. Parents and carers experience a permanent improvement in well-being relating to reduction in stress and anxiety of providing care without assistance and/or struggling to obtain the care their child requires: £7.04 million per year.

Other key non-monetised benefits by 'main affected groups'

Similar to Option 1.

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[1] All costs are at the central estimate.

[2] By 'triage' we mean the process of identifying whether or not the threshold for carrying out an assessment is met, and hence whether the case should proceed to assessment.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5[3]

The working assumptions are as follows.

(i) As per Option 1 the (provisionally) proposed framework will result in:
  (a) needs being met at an earlier stage as a result of entitlements being clearer so parents and carers know what child may be eligible for and how to get it;
  (b) a simpler legal framework being easier/quicker to apply;
  (c) assessments being carried out at an early stage, where the law requires it (not currently the case), ensuring needs are identified before they escalate;
  (d) advocacy to help families make the case for their entitlements;
  (e) national eligibility criteria ensuring high needs cases are not excluded;
  (f) guiding principle that prevention of escalation of needs should be considered;

(ii) The fact the threshold for an assessment is higher than Option 1 will require more local authority time/resources on triaging cases to work out whether an assessment is needed and more legal disputes over whether the assessment threshold is met;

(iii) This will be offset by a significant decrease in the number of assessments, as against Option 1.

(iv) The application of the higher assessment threshold under Option 2 requires a more difficult evaluative judgment on the part of decision makers which will not always be exercised correctly, resulting in an error rate whereby a small proportion of children with eligible needs are not assessed as such. Views on the likelihood/extent of this error rate will be sought during the consultation.

(v) There will be an increase in service provision resulting from more assessments being carried out, but this will be slightly less than under Option 1 owing to the error rate.

(vi) The extent of the increase in service provision is contingent on the eligibility criteria which are adopted, which is a matter for future discussion between central and local government and is an unknown. The increase shown in this analysis (between 10-30%) is for illustrative purposes only to show the potential costs/benefits depending on whether criteria are adopted which reflect the current 'national average' (i.e. maintaining the status quo in many authorities but requiring an increase in provision in other authorities) or whether more generous criteria are adopted requiring an increase in provision across more local authorities. Current eligibility criteria are being sought from local authority stakeholders as part of the consultation and we invite consultees' views on the potential for increase in service provision.

(vii) There will be an increase in parent and carer well-being which we measure using a WELLBY (see below), but this will be less than under Option 1 owing to the error rate.

(viii) A WELLBY delivers a permanent improvement in well-being to parents and carers.

(ix) The number of additional children requiring assessments are sufficiently captured by comparison between the Children in Need and SEND data. This is discussed further below in the evidence section. But we note there is a risk that we have underestimated the number of new assessments required. We invite consultees' views on this.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:**	**Net:**	

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[3] 1.5% discount rate applied to WELLBYs

Summary: Analysis & Evidence — Policy Option 3

Description: Simplification and modernisation of legal framework with no substantive changes.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

This option would be a lower-cost option whereby the legal framework is simplified and modernised to the extent possible without making any substantive changes to the powers, duties, rights and processes. In effect, this is likely to be limited to: updating the definition of disability; combining the existing duties (for example the different duties to assess parents and carers) under one statute; and enshrining the right to a care plan in legislation. This option, by design, would incur negligible costs.

Other key non-monetised costs by 'main affected groups'

Much less than Option 1. Some training costs arising from changes, but changes are not extensive, and training may be absorbed by CPD. Aside from that, there may be a minimal increase in assessment and service provision resulting from a less fragmented legal framework, but this will not be significant.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

The extent of the simplification/modernisation that can achieved without substantively changing the rights and processes in the legal framework is minimal and we assume the benefits will be non-material. For instance, we consider that modernising the language of the definition of disability will not materially change levels of service provision. Similarly, enshrining the right to a care plan in legislation is a codification of the current judicial interpretation of the law and will not affect who does/does not receive a care plan.

Other key non-monetised benefits by 'main affected groups'

The current definition of disability uses stigmatising language. There will be a non-monetised benefit to disabled children, their parents and carers from ceasing to use this definition.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5

See above. This option is limited to the provisional proposals that can be achieved at no/minimal cost. We invite consultees' views on whether other provisional proposals within the paper could be implemented at no/minimal cost. The nature of the changes is such that we assume they will not give rise to noticeable financial benefits. We seek consultees' views on this.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs:	**Benefits:**	**Net:**	

Evidence Base

Problems under consideration

Disabled children's social care law is out of date. The definition of disability in section 17(11) of the Children Act 1989 refers to any child who 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". This definition can be traced back to the creation of the welfare state and finds its roots in legislation intended to boost the employment prospects of servicemen injured during the Second World War, drafted at a time when our awareness of neurological conditions such as autism was in its infancy.

This law in this area is also inaccessible. It is spread across numerous statutes dating from 1970 onwards, which have to be read alongside an extensive body of regulations, case law and guidance. The Court of Appeal has described it as "a maze of interacting statutory provisions, which have been subject to frequent amendment".[1] The authors of the leading legal textbook on disabled children describe it as "a system of baffling complexity" the navigation of which amounts to "additional tiring and frustrating work".[2]

The law is also – potentially – unfair, in the sense that it permits children in similar circumstances to be treated differently. The law requires local authorities to make the arrangements necessary to meet the needs of disabled children. Those needs will depend on the nature of the child's disability: not where they live or how much money their local authority has left in its budget. But whether the child is able to access services to meet those needs depends on the eligibility criteria the local authority has adopted, taking into account their budgetary constraints. These criteria vary from authority to authority. This has the consequence that the same child might qualify to have their needs met in one area of the country but not another. This was not what Parliament intended.

On top of these problems, parents and carers have reported the following issues to us in the work leading to this consultation.

- There is too much focus on safeguarding disabled children from harm at the expense of meeting their needs.
- Those assessing the needs of disabled children do not always have expertise in disability.
- The eligibility criteria for accessing services are too high.
- The needs of parents, carers and siblings are often overlooked.
- The various teams, departments, and bodies responsible for a child sometimes operate in silos and do not communicate effectively with each other.

Policy objectives

Simplification

The purpose of reform is to simplify the law in this area. Our provisionally preferred option is a new, clearer and more cohesive legal framework for disabled children's social care, which would reduce the number of separate enactments in this area of law and allow for unnecessary and obsolete enactments to be repealed. This would make the law easier to use by social workers, health professionals and others. This would facilitate joint working within and between public bodies where such is required.

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[1] *R (Spink) v Wandsworth London Borough Council* [2005] EWCA Civ 302, [2005] 1 WLR 2884 at [1] by Lord Phillips MR.

[2] S Broach and L Clements, *Disabled Children: A Legal Handbook* (3rd ed 2020) p 84, para 3.3.

It would also clarify the rights of disabled children, their parents and carers. Law that is easy to understand will help to ensure that those who approach their local authority for assistance are clear about how decisions to provide services are made by the authority.

Simpler law should also be easier to enforce, since disabled children, their parents and / or carers will be aware of their rights and local authorities will understand their responsibilities.

Promotion of consistency

A key objective of reform is to eliminate anomalies and unjustified inconsistencies in the law. In addition, where possible, the proposed reforms seek to align disabled children's social care law with the legislation governing adult social care, support for special educational needs and children's rights more generally.

Modernisation

Reform of disabled children's social care law would bring the law in line with modern understandings of disability and avoid the use of outdated and stigmatising language. It would allow for a system that is more consistent with modern equality and human rights law. Modernisation would also ensure that the legal framework is able to accommodate the development of Government policy in the future.

Development of a framework that sufficiently meets the specific needs of disabled children and their families

This is an overarching objective of the review and pursuing the other objectives above will contribute to meeting this objective. But meeting this objective may also require further measures which do not fall under the headings above, for example rebalancing the legislation so as to ensure an appropriate balance between identifying and meeting the needs of disabled children, and protecting them from harm,

Why is intervention needed?

Whether the State should provide social care services to disabled children, their families and/or their carers is a very broad policy matter which is not within the scope of our terms of reference. Our focus in this project and in this draft impact assessment is upon whether there is sufficient justification to reform the means by which the State intervenes. Those means consist of a legal framework made up of several different Acts of Parliament, regulations and other statutory instruments.

Our provisional view is that the framework is complex, inaccessible, inconsistent, and relies upon outdated language. We consider that it frustrates the policy of Parliament underpinning the Chronically Sick and Disabled Persons Act 1970, namely that local authorities should have a duty to meet certain needs of disabled children on a standardised basis. Further, our provisional view is that, insofar as it does not facilitate the early and consistent assessment and meeting of the eligible needs of disabled children, their parents and/or their carers, the current framework risks causing both economic and social harms:

- Failing to meet the needs of disabled children at an early stage can lead to those needs escalating, giving rise to the need for more costly interventions such as: (a) complex health provision; (b) long term residential placements; and (c) taking children into care. For example, the annual cost of residential care for children without disabilities is estimated to be just over £240,000.[3] The cost for children with disabilities will be significantly greater. The average cost per child with a disability was estimated at about £325,000 per year but this can vary significantly

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[3] £4153 per resident if able-bodied at 2019/20 prices [£4636 in 2023 prices]. See: https://www.pssru.ac.uk/pub/uc/uc2021/services.pdf.

dependent on severity of disability and location of residential facility.[4] For those cases at the margin, appropriate and lower-cost interventions such as weekend short breaks (respite) can prevent these outcomes.

- Failing to meet the needs of disabled children, especially at an early stage, also materially impacts upon their outcomes in health, academic achievement, mental well-being, and life opportunities, including their earning capability.[5]

- Failing to meet the needs of disabled children can increase the burden on parents and informal carers, including siblings. Recent research carried out by the University of Birmingham has identified that over 40% of carers of disabled children have thought about taking their own life.[6] Parents and carers struggling to cope are also likely to have increased need to call upon NHS resources.[7] We explain below how we have sought to quantify the well-being impacts on parents and carers by the use of WELLBYs.

- Beyond the direct health and well-being impacts on parents and/or carers, failing to meet the needs of disabled children risks limiting the participation of parents and/or carers in society, for instance by limiting their ability to work,[8] or to take part in education, thereby boosting their long-term prospects. It can also lead to the risk of relationship breakdowns, which are prevalent among those struggling without adequate assistance. We note that children with disabilities are disproportionately represented in single-parent households,[9] where limited opportunities for external employment often necessitate reliance on income support.

As the current framework is statutory (albeit one subject to considerable judicial interpretation over the years), the only mechanism for intervention would be through statutory reform. This would require both Government intervention and Parliamentary time.

Scale and scope

By scale and scope we refer to the number of individuals and groups who will be directly impacted by the outcome of this review and by how much. By way of background, disabled children's social care is administered by the social services departments of local authorities. The process by which a disabled child accesses the support they require generally starts with the child being referred to social services by their parent or carer, or by a third party. A decision will then be taken as to whether the child is entitled to an assessment of their social care needs. If so, that assessment will be undertaken and, based on the information gathered during that assessment, a decision will be taken as to whether the child is eligible for support, based on any eligibility criteria that the local authority has adopted. If so, then a plan for the delivery of that support to the child will be put in place and that authority will secure the provision of that support either by providing it directly, arranging for a third party to provide it or making direct payments so that the family can purchase the support for themselves. During this process parents and carers who need support in order to provide care more effectively may also have their own needs assessed. Families who are unhappy with any of the decisions made during this process have various remedies

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[4] This is the average of three residential care homes for children with disabilities. See: https://www.lincolnshire.gov.uk/directory-record/76412/children-in-residential-care-and-supported-living-accommodation; https://www.thurrock.gov.uk/foi-responses/children-in-residential-care; https://democracy.brent.gov.uk/mgConvert2PDF.aspx?ID=132203.

[5] For an attempt to monetise the value of tax receipts linked to increased economic participation of disabled children reaching adulthood, see Development Economics, *The Gap Widens: The Economic Case for Closing the Funding Gap for Disabled Children's Health & Social Care Services* (2021). We do not directly rely upon the modelling contained in that report because it addresses both health and social care interventions, and our project is limited to social care.

[6] S O'Dwyer and others, "Suicidal Thoughts and Behaviors in Parents Caring for Children with Disabilities and Long-Term Illnesses" (2024) *Archives of Suicide Research* 1.

[7] In the first instance, there are likely to be GP visits to deal with the symptoms, with a 10-minute GP visit in 2022/23 estimated to cost around £55. See DH Unit cost of health and social care page 64 Table 9.4.2. https://kar.kent.ac.uk/105685/1/The%20unit%20costs%20of%20health%20and%20social%20care_Final2%20%282023%29.pdf.

[8] For an attempt to monetise the value of tax receipts linked to increased economic participation of the parents and siblings of disabled children, see Development Economics, *The Gap Widens: The Economic Case for Closing the Funding Gap for Disabled Children's Health & Social Care Services* (2021). We do not directly rely upon the modelling contained in that report because it addresses both health and social care interventions, and our project is limited to social care.

[9] The proportion of disabled children in lone parent families (11%) was higher than children in couple families: Department for Education, *Childcare and early years survey of parents* (August 2023) table B11.

potentially available including internal complaints, complaints to the Local Government and Social Care Ombudsman and judicial review.

It can be seen from this overview that the key groups affected by this review are local authorities, who administer and provide disabled children's social care, and the disabled children and their parents or carers who receive it. We consider the scale and scope of the specific provisional proposals that we make in the Options section below. In this preliminary section we consider scale and scope more broadly, looking at the total numbers of local authorities and disabled children and their families who may be affected by the review. This analysis provides the foundation for the more specific analysis that follows later in the document.

Local authorities

The structure of local authorities varies across the country. Some metropolitan areas and the London Boroughs operate under a single tier structure with councils responsible for all services in their area, including children's social care. In the rest of the country, there are two tiers of local authority – district and county councils – with responsibility for council services split between them. In those areas children's social care falls within the remit of the county council. In total there are 317 local authorities. Of these, 153 have responsibility for children's social care. This review will directly affect all 153 of those authorities.

Disabled children and their families

It has not been possible to precisely identify the number of children (and, in turn, the number of parents and/or carers) who will be affected by this review: there is no comprehensive, publicly available set of local authority level statistics showing the nature and extent of the social care needs of disabled children in each local authority. In the absence of such statistics, the best we can do at this stage is to look at other related statistics and draw analogies.

An estimated 1.34 million children (aged 0-18 years old) in England have a disability out of a total of 13.34 million children. See table 1 below.

Table 1: Disability in England [millions of people], 2012/13 and 2021/22

	2012/13[10]	2021/22[11]
Population size[12]	53.92	57.11
No. of people with disabilities	10.0	13.3
Percentage of population disabled	19	23
No. of children with disabilities (0-18)[13]	0.8[14]	1.34
Percentage of children with disabilities	7[15]	10

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[10] The intention had been to use a 10-year window for comparison but in 2012/13 new disability metric applied which continues to present statistics.

[11] The figures from 2013 are based on different definition of disability.

[12] Mid-year population estimates of the end year, i.e 2021/22 – mid year for 2022.

[13] Mid-point in 15-19 used to extract up to 17 years old.

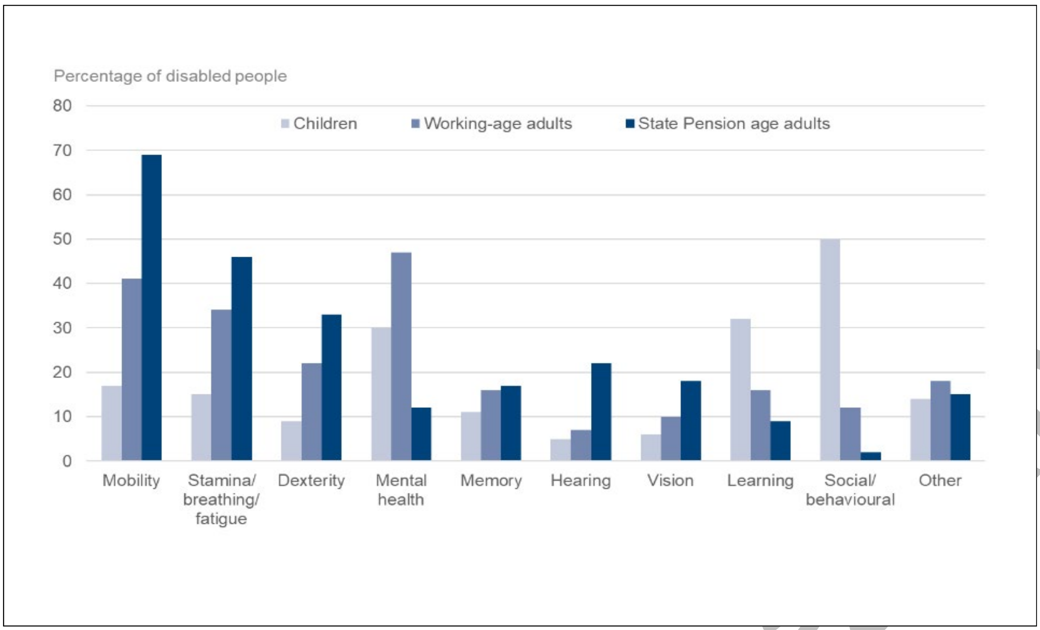
[14] Relies on 2013/14 as 2012/13 unavailable.

[15] 2012/13 unavailable – this therefore relies on FRS 2013/14.

(UK); ONS population data[16]

The types of disability span a wide range of 9 distinct categories with the prevalence of particular impairment types being age dependent. See Figure 1 below showing impairment types for the UK.

Figure 1: Impairment types by age group, 2022 to 2023[17].



The most common reported 'impairments' for children were social and behavioural (50%), learning (32%) and mental health (30%). It is important to note that someone might suffer from more than one condition.[18] In 2022, 8% of children had a "long-standing physical or mental impairment, illness or disability".

In 2023:[19]

- Social services across the country received referrals for 566,960 children and completed 655,540 assessments.[20]
- As of 31 March, there were 403,090 children who were assessed as being "in need".[21]
- Of these, 51,790 children (12.8%) had a disability recorded. For 32,790 of these children, disability was assessed as being their primary need.
- Of the cohort of disabled children, the most prevalent conditions were grouped under the headings of autism (41.4%), learning (36.9%) and behaviour (19.4%).[22]
- Of the cohort of children with disability assessed as their primary need, 67% were male and 33% were female. The average age bracket for both boys and girls was 10 to 15 years old.

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[16] https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/estimatesofthepopulationforenglandandwales. See tables 1[UK] and 10[England]

[17] See Department for Work and Pensions, *Family Resources Survey* (2023) Table 4.6, https://www.gov.uk/government/statistics/family-resources-survey-financial-year-2022-to-2023/family-resources-survey-financial-year-2022-to-2023

[18] The data allows for the selection of "all that applies".

[19] Department for Education, *Children in need data* (2023) data sets A3, B1 to B3 and C1 to C2.

[20] Some assessments may have started in the previous year, which may explain why there were more assessments than referrals.

[21] See the glossary at p vi and para 3.6 of the consultation paper for what it means to be a "child in need".

[22] Some children may be affected by more than one of these conditions.

In 2023 to 2024 there were 1,238,851 pupils in schools in England receiving support for special educational needs, but without an education, health and care plan (EHCP). There were 434,354 pupils receiving support for special educational needs with an EHCP.[23]

At a bare minimum we can say that this review will affect the 51,790 disabled children assessed as being in need, and their families. Realistically, we anticipate the real number affected will be higher. At present, all of the 1.34 million or so disabled children in England are legally classified as children in need and so may be affected to some extent by the outcome of this review. However, not all of these children want or need help from social services.

The special educational needs statistics, we think, may provide a better starting point. Whether a child requires support to meet their special educational needs does not automatically mean that they have a disability or that they require social care. Conversely, the fact that a disabled child has social care needs does not inevitably mean they have special educational needs. However, all children with EHCPs are entitled to have their social care needs assessed (even if this does not always happen). Experts we have heard from in the lead up to this consultation consider that there is substantial overlap between those disabled children with social care needs and those children with special educational needs that are met under an EHCP. This means that there is likely to be a correlation between the numbers of children receiving support to meet their special educational needs and – at the very least – the numbers of disabled children who may wish or need to have their social care needs assessed.

Option descriptions

This impact assessment compares Options 1 to 3 against the do nothing option (Option 0):

- Option 0 – Do nothing. Under this option, the problems outlined above would persist.
- Option 1 – Full implementation of proposals with an assessment threshold where ‘it appears the child may have needs for care and support’.
- Option 2 – Full implementation of proposals with an assessment threshold where ‘the child is likely to be eligible for care and support’.
- Option 3 – Simplification and modernisation of legal framework with no substantive changes.

Option 0 – Do nothing

Option 0 involves retaining the current legal framework unchanged. In and of itself, this incurs no costs. But it also generates no benefits and means that the problems outlined above – including that the law is overly complex, in need of modernisation and results in children being treated inconsistently across the country – are not addressed.

Please note that there are there are ongoing Government policy developments in disabled children’s social care which may have costs implications. These are not considered as part of this option for purposes of the draft impact assessment. This is the standard practice in Law Commission impact assessments.

Option 1 – Full implementation of proposals with statutory duty to assess social care needs of disabled child where ‘it appears the child may have needs for care and support’.

The proposals:

The following list of provisional proposals is not an exhaustive list but is limited to the most significant proposals that are likely to have financial or social impact.

- There should be a new, simplified and unified legal framework for disabled children’s social care, accompanied by guidance for local authorities and guidance for parents and carers.

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[23] Department for Education, *Special educational needs in England* (2022 to 2023).

- A child should be regarded as disabled for the purposes of disabled children’s social care law if: they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The following conditions should not be excluded from being considered as impairments: addiction; a tendency to set fires; a tendency to steal; a tendency to physical or sexual abuse of other persons; exhibitionism; and voyeurism.
- There should be a single express duty to assess the social care needs of disabled children. An assessment should be carried out where ‘it appears the child may have needs for care and support’.
- Assessments should be proportionate and appropriate to the circumstances of the child and their family.
- Assessors should have appropriate expertise and training.
- Local authorities should be required to provide disabled children and their families with a copy of their assessment.
- There should be a single duty to assess the needs of a carer for a disabled child, which should arise upon: (a) request by the carer; or (b) it appearing to the local authority that the carer may have needs for support.
- There should be a single statutory duty to meet the social care needs of disabled children, subject to national eligibility criteria to be co-produced by central and local Government.
- There should be powers to meet needs: (a) that do not satisfy the national eligibility criteria; and (b) pending an assessment of needs.
- There should be a power to meet the needs of parents and carers.
- Local authorities should be able to provide services: directly; indirectly through third parties; and by means of direct payments. In addition, parents, carers and children aged 16 and over should have a right to a personal budget.
- The regime for direct payments should be adapted so that: (a) the amount of the payment is the amount sufficient to secure the provision needed, as opposed to an amount that is estimated to be reasonable; and (b) payments should be kept under review, so that their sufficiency can be monitored and alternative arrangements made if necessary.
- Disabled children who are eligible to have their needs met by social services should have a statutory entitlement to a plan setting out what services they are to receive, and where, when and how those services will be provided. The plan to meet the needs of a disabled child should be combined, where appropriate, with other plans for the child such as their EHCP, care plan or pathway plan.
- The current dividing line between social care and health care in the context of children, based upon the scale and type of the care being provided, should be placed on a statutory footing, with a regulation-making power to enable that line to be changed in future.
- The Care Act 2014 should be amended to provide a statutory age at which transition planning should be started in relation to disabled children.
- Decision-making as to the assessment and meeting of the social care needs of disabled children should be based upon: 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; and a final check that decision-makers must apply as to whether the purpose being served by the proposed decision or action can be as effectively achieved in a way which is less restrictive of the child’s rights and freedom of action.
- The considerations which decision-makers should have regard to in applying the overarching principle are:
    - the importance of promoting the upbringing of the child by the child's family, in so far as doing so is consistent with promoting the best interests of the child;
    - the importance of the child participating as fully as possible in decisions relating to the exercise of the function concerned;
    - the importance of the child being provided with the information and support necessary to enable participation in those decisions, having regard to their particular needs;

  - 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 parents and carers in order to facilitate the development of the child and to help them achieve the best possible outcomes at each stage of their life;
  - the importance of preventing or delaying the development of the needs for care and support; and
  - the need to prepare disabled children for adulthood and independent living; and the characteristics, culture and beliefs of the child (including, for example, language).
- Children (of any age) who have the ability to do so should be able to: request an assessment of their social care needs; make representations in the course of the assessment of those needs; make representations about the content of any plan developed to meet those needs; opt-out of advocacy support; request direct payments; and make use of remedies.
- There should be a right to independent advocacy for any disabled child or their parent and carer who would otherwise have difficulty in participating in the assessment and planning process.

Assumptions:

Our working assumptions are set out below.

- The (provisionally) proposed framework will result in needs being met at an earlier stage as a result of:
  - entitlements being clearer so parents and carers know what child may be eligible for and how to get it;
  - a simpler legal framework being easier/quicker to apply;
  - assessments being carried out at an early stage, where the law requires it (not currently the case), ensuring needs are identified before they escalate;
  - advocacy to help families make the case for their entitlements;
  - national eligibility criteria ensuring high needs cases are not excluded; and
  - guiding principle that prevention of escalation of needs should be considered.
- There will be an increase in service provision resulting from more assessments being carried out and needs identified.
- The extent of the increase in service provision is contingent on the eligibility criteria which are adopted, which is a matter for future discussion between central and local government and is an unknown. The increase shown in this analysis (between 10-30%) is for illustrative purposes only to show the potential costs/benefits depending on whether criteria are adopted which reflect the current 'national average' (i.e. maintaining the status quo in many authorities but requiring an increase in provision in other authorities) or whether more generous criteria are adopted requiring an increase in provision across more local authorities. Current eligibility criteria are being sought from local authority stakeholders as part of the consultation and we invite consultees' views on the potential for increase in service provision.
- There will be an increase in parent and carer well-being arising from the increase in services provision which we measure using a WELLBY (see below);
- A WELLBY delivers a permanent improvement in well-being to parents and carers;
- The number of additional children requiring assessments are sufficiently captured by comparison between the Children in Need and SEND data. This is discussed further below in the evidence section. But we note there is a risk that we have underestimated the number of new assessments required. We invite consultees' views on this.

We invite consultees' views on these working assumptions.

Option 2 – Full implementation of proposals with statutory duty to assess social care needs of disabled child where 'the child is likely to be eligible for care and support'.

Option 2 is a variation on Option 1. It involves a provisional proposal to adopt a single express duty to assess the social care needs of disabled children. However, the threshold for carrying out the assessment would be higher than in Option 1: an assessment would only be required where 'the child is likely to be eligible for care and support'. All other provisional proposals would remain unchanged.

The key differences between this option and Option 1 are as follows.

- The fact the threshold for an assessment is higher than Option 1 will require local authorities to expend more time/resources on triaging cases. By 'triage' we mean the process of identifying whether or not the threshold for carrying out an assessment is met, and hence whether the case should proceed to assessment.
- In a small proportion of cases, there will be legal disputes over whether the assessment threshold is met. Such disputes are less likely under Option 1 as there will be fewer refusals under that Option.
- The costs of triage will be offset by a significant decrease in the number of assessments, as against Option 1.
- The application of the higher assessment threshold under Option 2 requires a more difficult evaluative judgment on the part of decision makers which will not always be exercised correctly, resulting in an error rate whereby some children with eligible needs are not assessed.
- There will be an increase in service provision resulting from more assessments being carried out, but this will be less than under Option 1 owing to the error rate.
- There will be an increase in parent and carer well-being as a result of the increase in service provision, but this will be less than under Option 1 owing to the error rate.

We invite consultees' views on these assumptions.

Option 3 – Simplification and modernisation of legal framework with no substantive changes to duties, rights and processes

Option 3 is intended to be a lower-cost option whereby the legal framework is simplified and modernised to the extent possible without making any substantive changes to the powers, duties, rights and processes. In effect, this is likely to be limited to:

- updating the definition of disability;
- combining the existing duties (for example the different duties to assess parents and carers) under one statute; and
- enshrining the right to a care plan in legislation.

This option, by design, will incur negligible costs. Because the extent of the simplification/modernisation that can achieved without substantively changing the rights and processes in the legal framework is minimal, we assume the benefits will be non-material. For example, modernising the language of the definition of disability will not change levels of service provision. Similarly, enshrining the right to a care plan in legislation is a codification of the current judicial interpretation of the law and will not affect who does or does not receive a care plan.

We invite consultees' views on whether our assumptions about the costs and/or benefits of these provisional proposals are reasonable and whether other provisional proposals within the paper could be implemented at no/minimal cost.

Options considered but not taken forward

We have considered but not taken forward the option of seeking to implement reforms by changes to guidance only. This is not a viable option to resolve the problems that we describe above that arise directly from the current statutory framework. Only legislative change can resolve those problems.

Monetised costs and benefits of each option

This draft Impact Assessment identifies monetised and non-monetised impacts on individuals, groups and businesses with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of the proposed scheme are compared to the "do nothing" option (Option 0). We emphasise that this exercise is done for illustrative purposes, because the most significant costs implications will flow from matters that are for future discussion between central and local government – principally the eligibility criteria that are adopted for disabled children's social care – and hence are an unknown.

Impact Assessments prioritise the quantification of costs and benefits in monetary terms, including the valuation of non-market goods and services. However, to provide a comprehensive evaluation of a policy's potential impact, it is equally important to consider the broader societal effects, extending beyond purely financial outcomes. The net present social value[24] (NPSV) aims to achieve this using a time frame of ten years, with the present [2024] being year 0. We assume the transitional costs and benefits (monetised and non-monetised) occur in year 0, the current year, unless otherwise indicated. Ongoing costs and benefits accrue in years 1 to 10. We would normally apply a discount rate of 3.5% in accordance with HM Treasury guidance.[25] Unless stated all figures are in 2023 prices and have been uprated using the GDP deflator to adjust for inflation.

Option 0: Do nothing [base case]

Do nothing in this context means make no legal changes. We are aware that there are there are ongoing Government policy developments in disabled children's social care which may have costs implications which are not considered as part of this option. For purposes of this impact assessment, because the 'do nothing' option is compared against itself its costs and benefits are necessarily zero, as is its NPSV.

Option 1: Full implementation of proposals with an assessment threshold where 'it appears the child may have needs for care and support'

Costs

Transitional Costs

1. Familiarisation costs

   Social workers who work directly with children and families will need to be familiar with the proposed changes. Some familiarisation costs are likely, for professionals to acquaint themselves with the new guidance and amended legislation. Table 2 below identifies additional reading times using readingsoft.com to give a general idea of reading efficiencies. Measurements of speed and comprehension depend upon the context and upon the set of questions.

   Table 2: Reader profile

Screen	Paper	Comprehension	Reader Profile
100 wpm	110 wpm	50%	Insufficient

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[24] Costs to society are given a negative value and benefits a positive value. After adjusting for inflation and discounting, costs and benefits can be added together to calculate the Net Present Social Value (NPSV) for each option. See HMT Green Book at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf#page=1&zoom=auto,-47,842 p 21.

[25] Savings relating to health benefits – WELLBYs are discounted at 1.5%.

200 wpm	240 wpm	60%	Average reader
300 wpm	400 wpm	80%	Good reader
700 wpm	1000 wpm	85%	Excellent, Accomplished

readingsoft.com; Wpm = words per minute

It seems reasonable to expect social worker starters to be less familiar with the information, requiring more time to comprehend. Established social workers may be a mix of good/excellent readers as the information is familiar territory with a high degree of skimmed reading. Table 3 below provides an estimate of the requisite time investment.

Table 3: Familiarisation costs in £million

	Low estimate	Central estimate	High estimate
A. No. of additional pages	200	250	300
B. Social worker starters[26]	£0.33	£0.46	£0.60
C. Agency and established social workers[27]	£0.57	£2.05	£2.87
Total cost [B + C]	£0.91	£2.51	£3.47

Assumptions:

- Additional 200 [low] - 300 [high] pages of new guidance, 250 pages the central estimate.
- Range of reading time from paper [highest wpm] – screen [lowest wpm] with central estimate the mid-point.
- Social worker starters are average readers, all other social workers range from good to excellent.
- 50% of the social workers working with children/families are involved in disabled children's social care in some capacity and will need to be aware of the new framework.

Annual total cost: £2.51 million [central estimate]

2. Training of assessors

We expect that all social workers working in disabled children's social care will need to undertake general training to familiarise themselves with the new framework. Within this, two groups of social workers can be identified: (a) those employed by the local authority; and (b) self-employed agency workers. In addition, the provisional proposal that those responsible for assessing the needs of disabled children should have particular expertise in disability means that there will need to be a cohort of expert assessors within each local authority. Providing training for this expert cohort will require additional costs. Table 4 below sets out the cost to the local authority in providing training to PAYE staff it employs directly and provides an indication of costs borne by self- employed social workers.

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[26] Are defined as those new to the local authority which can include newly qualified social workers. This draft impact assessment assumes that this group is unfamiliar with the legal framework.

[27] For the number of social workers, see https://explore-education-statistics.service.gov.uk/data-tables/children-s-social-work-workforce/2023?subjectId=ad9d4305-b937-494a-71d1-08dc32cc35ec. Average salary provided by ONS ASHE and a further 18 percent uplift is applied to reflect the cost to the employer, See Table 14.6a, line 171: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ash.

Table 4: Cost of training social workers in £million

	Low estimate	Central estimate	High estimate
A. Training cost to local authorities	0	£1.04	£1.36
B. Training cost to self-funded agency social workers	£0.18	£0.24	£0.60
C. Expert cohort training	£0.13	£0.17	£0.21
Total Cost	£0.31	£1.45	£2.17

Assumptions:

- In-house e-learning module – low estimate £0 per person. Proxy used to estimate cost of training is half day Care Act 2014 familiarisation course averaging £55-£72 per person.
- Training for expert cohort required at each local authority [153] averaging 3-5 persons at a cost of £280 per person in training cost[28].

Annual total cost: £1.45 million [central estimate]

3. New assessment framework

We anticipate that most local authorities will adopt a new assessment framework to implement the new express duty to assess, and the changes to the assessment process and eligibility criteria we propose. We proceed on the basis that the cost of developing this framework will be relatively modest and that authorities are likely to share frameworks and templates.

Ongoing Costs

4. Increased number of assessments

The number of assessments increases with the introduction of an express requirement to assess the social care needs of disabled children. Improved procedural clarity available to parents/carers also aids the rise in demand. There is a significant degree of flexibility as to the form and duration which assessment may take. For example, some parents and carers may complete online self-assessments on behalf of their children which are then verified by the local authority. In other cases the child will need to be assessed face-to-face. See table 5 below setting out the additional assessment costs.

Table 5: Annual cost of additional assessments in £million

	Low estimate	Central estimate	High estimate
No. of additional assessments[29]	23,560	26,180	28,800
Cost of online assessments	£0.24	£0.26	£0.29
Cost of face-to-face assessments	£3.79	£8.42	£13.90

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[28] £280 is the equivalent cost of two comprehensive courses on autism. The level of expertise requires in-depth and comprehensive coverage across a range of topics not limited to autism. Autism is used here as a proxy, and we invite consultees' views on whether it is a suitable proxy for these purposes.

[29] Based on the three-year average [2021 to 2023], rounded to nearest 10

Cost of advocacy provision[30]	£1.58	£5.27	£9.65
Total cost	£5.61	£13.95	£23.84

Assumptions:

- The estimate of the additional assessments required is based upon the difference between the number of EHC needs assessments and the number of children in need [CIN] with a disability recorded. The three-year average is the central estimate +/- 10% gives the high/low estimates.
    - The central assumption here reflects the correlation between the threshold for obtaining an EHC needs assessment and the provisionally proposed threshold for obtaining a social care assessment for a disabled child under Option 1.
    - We assume that majority of those who qualify for an EHC needs assessment have a disability (as the test is targeted at this cohort among others).
    - We assume that those disabled children who may want and need SEN provision at school under an EHCP, and hence qualify for an EHC needs assessment, may also want and need social care support at home.
    - The number of EHC assessments undertaken annually therefore provides a proxy for the number of social care assessments required annually under Option 1.
    - We subtract from this the number of disabled children who have already been assessed as CIN to obtain the number additional assessments required each year.

  We emphasise that the lack of clear data establishing how many children are newly assessed each year as being in need and having a disability (whether it is their primary need or not) and the use of EHC assessments as a proxy means there is significant uncertainty in this estimate and that it may be an underestimate of the number of additional assessments required. We seek consultees' views on this. To reflect the uncertainty in this estimate we have adopted a higher than usual variation (+/- 10%) for the high/low estimates.
- 20% of all assessments are undertaken online and require 2 hours of a social worker's time to check accuracy of completion. The remaining 80% of assessments are face-to-face and require between 1 to 3 days. Some assessments will take less than 1 day or more than 3 days, but 1-3 days represents the median range. These days may be spread over a longer period of time, for instance 3 days over the course of 1 month. This estimate is based on expert experience and what we have heard during the work leading up to this consultation: the data available on average duration of assessments shows the time elapsed between start and finish of the assessment and not the days spent working on the assessment.
- Between 10% to 50% of face-to-face assessments require advocacy provision [30% being the central estimate]. This estimate is based on expert experience and what we have heard in the work leading up to this consultation.

Annual total cost: £13.95 million [central estimate]

Present value: £116.02 million over 10 years [central estimate]

5. Increased cost of support

   The increased number of assessments carries the commensurate increased demand for direct payments and short breaks as our proposals require local authorities to provide the requisite support. See table 6 below.

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[30] Average cost per advocacy session, £792 in 2020/21 prices. See https://www.pssru.ac.uk/pub/uc/uc2021/services.pdf.

Table 6 – Annual cost of additional demand for support in £million

	Low estimate	Central estimate	High estimate
No. of additional assessments[31]	23,560	26,180	28,800
Percentage eligible for support	10%	20%	30%
Cost of direct payments	£2.75	£6.42	£10.09
Cost of short breaks	£4.28	£9.98	£15.68
Cost of 'other' support	£0.45	£1.00	£1.65
Total cost	**£7.48**	**£16.40**	**£25.77**

Assumptions:

- The rationale and assumptions underpinning the estimate of the additional assessments required is set out above.
- We calculate the cost of additional support based on an assumption that 10-30% of the newly assessed cases will need and meet the eligibility for social care support. Note that this range of 10-30% is not an estimate, but an illustration. The extent of the increase in service provision is entirely contingent on the eligibility criteria which are adopted, which is a matter for future discussion between central and local government and is an unknown. The increase shown here is intended to show the potential costs/benefits depending on:
    - whether criteria are adopted which reflect the current 'national average' (i.e. maintaining the status quo in many authorities but requiring an increase in provision in other authorities), in which case the proportion of children qualifying for support who have not previously been identified may be relatively modest (1 in 10); or
    - whether more generous criteria are adopted requiring an increase in provision across more local authorities, with around 1 in 3 newly assessed children qualifying for services.

  This approach is therefore intended to illustrate the potential cost/benefit if eligibility criteria are adopted which result 10-30% of newly assessed children qualifying for services. We emphasise that it is **not** to be read as an estimate that 10-30% of children will qualify for services if eligibility criteria are adopted.

  Current eligibility criteria are being sought from local authority stakeholders as part of the consultation and we invite consultees' views on the potential for increase in service provision.
- In this part of the analysis, we assume 40% of those eligible receive direct payments [at £2,780[32] per child], 40% receive short breaks [at £4,540 per child] and 20% receive access to other support [at £955 per child].[33] This estimate is based on what we have heard in our work leading up to the consultation.

Annual total cost: £16.40 million [central estimate]

Present value: £136.39 million over 10 years [central estimate]

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[31] Rounded to nearest 10

[32] A further 5% is added to £2780 to take account of additional support

[33] The data source is https://explore-education-statistics.service.gov.uk/ . The publication relied upon is *Planned LA and school expenditure*: Category – Children and Young People's Services [Financial year 2023/24]. Total net planned expenditure for: Direct payments [£144,043,779]; Short breaks [respite] for disabled children [£234,999,172]; Other support for disabled children [£49,471,250]. Per capita cost derived by dividing the total expenditure by the number of children in need with a disability recorded [51,790].

Benefits

Transitional Benefits

None identified

Ongoing Benefits

1. Increased scope for home care and reduced reliance on residential care

   Our proposals are intended to promote necessary early intervention and avoid the escalation of needs. Our assumption is that, with effective support at home (including short breaks from caring responsibilities where required), parents and carers will be better equipped to continue to care for their children. In a minority of cases, this will, in turn, avoid parents and carers becoming unable to continue to deliver care resulting in a need for residential care. As set out previously, the cost of residential care for children with disabilities is significant. Further, indications are that sector inflation is significantly greater than national inflation. The percentage applied to derive the reduced demand for residential care aligns with the increased number eligible for support[34]. See table 7 below.

Table 7: Annual savings from reduction in demand for residential care, in £million

	Low estimate	Central estimate	High estimate
No. of children in residential care[35]	2003	2003	2003
Percentage fall in demand	4%	6%	8%
Reduced annual cost of care	**£26.02**	**£43.56**	**£64.49**

Assumptions:

- **With improved access to support parents are better able to care for children at home, which leads to a 4% to 8% reduction in demand for residential care, with 6% being the central estimate. This estimate is based on what we have heard in our work leading up to the consultation and there is particular risk attached to this estimate. We seek consultees' views on this.**
- The average weekly cost of residential care for children with disabilities is £6,245 to £7,739, with £6,791 the central estimate.[36]

Annual total benefit: £43.56 million [central estimate]

Present benefit: £362.27 million over 10 years [central estimate]

2. Improved parent/carer well-being

Well-being as measured by WELLBYs

Well-being is a multifaceted concept that encompasses more than just how individuals feel in the moment. The Office for National Statistics (ONS) has developed a robust framework for understanding

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[34] Increased number eligible for support – 2050.

[35] Three-year average 2021 to 2023

[36] Based on cost date available from Lincolnshire, Thurrock and Brent and with reference to: https://www.pssru.ac.uk/pub/uc/uc2021/services.pdf.

well-being, emphasising its significance at the individual, community, and national levels, as well as its sustainability for future generations.[37]

Difficulties in accessing the support required to meet the needs of a disabled child impacts adversely on the well-being of those providing care to them. Recent research carried out by the University of Birmingham has identified that over 40% of carers of disabled children have thought about taking their own life.[38] More generally, the long-term harmful effects of highly stressful situations are well recognised. Further, evidence indicates that while people often adapt to various life events and changes, leading to a reduction of the initial impact on well-being over time, this adaptation is less evident in situations that continuously demand attention[39]. For instance, parents and carers facing the demands of caregiving with limited opportunities for respite may experience long-term effects on their well-being.

We believe it would be an underestimation of the impact of our proposals to ignore the gain in well-being to parents and carers from access to support in caring for children with disabilities, including measures such as access to regular respite. We have therefore sought to monetise the benefits of improved well-being. To do so, we have used the concept of a 'Well-being adjusted life year' (WELLBY). A WELLBY is defined as one point (1.0) of self-reported life satisfaction measured on a zero to ten scale (0-10) for one individual for one year. In its 2021 guidance,[40] the Treasury recommended a value of £13,000 per WELLBY (in 2019 prices).

The following table takes a conservative position to illustrate the benefit. See table 8 below.

Table 8: Annual improvement in life satisfaction, in £million

	Low estimate	Central estimate	High estimate
No. of additional assessments	23,560	26,180	28,800
No. eligible for support[41]	2,360	5,240	8,640
No. of parent carers impacted	1,180	2,620	4,320
Net gain	**£1.81**	**£8.05**	**£19.92**

Assumptions:

- 10 percent [low estimate] – 30 percent [high estimate] are eligible for support with 20 percent being the central estimate
- 50 percent of all parents and carers eligible for support experience improved well-being. Our evidence for this is based on the recent evaluation of the Family Fund where 47 percent of parent carers said access to information and support improved their general wellbeing[42]
- Parents and carers impacted: 1 adult per assessment [low and central estimate] or 2 adults per assessment [high estimate].

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[37] https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/methodologies/personalwellbeingfrequentlyaskedquestions

[38] S O'Dwyer and others, "Suicidal Thoughts and Behaviors in Parents Caring for Children with Disabilities and Long-Term Illnesses" (2024) *Archives of Suicide Research* 1.

[39] People tend to adapt little to situations that regularly draw their attention – See P. Dolan, "Happiness by design: Finding Pleasure and Purpose in Everyday Life", London, United Kingdom, Penguin (2014)

[40] Wellbeing Guidance for Appraisal: Supplementary Green Book Guidance: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005388/Wellbeing_guidance_for_appraisal_-_supplementary_Green_Book_guidance.pdf

[41] Rounded to nearest 10

[42] See *Family Fund Evaluation, UK Report*, 2022/23, Family Fund

- 1 WELLBY is equivalent to £13,000 in 2019 prices. We assume that parent carers experience small improvements from 0.1 to 0.3 with 0.2 being the central estimate[43].
- Wellbeing evidence suggests there will be distributional effects such that the value of an additional pound of income is higher for a low-income recipient and lower for a high-income recipient[44]. We do not have sufficient information to incorporate a proportional approach but will seek consultees responses.

Annual total benefit: £8.05 million [central estimate]

Present benefit: £74.24 million over 10 years [central estimate]

3. Improved well-being of children with disabilities and their siblings

   The previous table evaluates the improved life satisfaction of parents and carers of children with disabilities but not the children themselves. We have not sought to monetise the impact on the well-being of disabled children. That having been said, we consider it legitimate to proceed on the assumption that receiving the right support, especially at an early stage, materially and positively impacts upon the child's mental health and well-being. This is particularly so in situations where early intervention forestalls an escalation in needs and (potentially) more disruptive and/or coercive interventions.

   In relation to siblings, if they are adult siblings delivering care, they fall to be considered above under parents and carers. If the siblings are, themselves, children, we do not seek to monetise well-being impact upon them but consider it legitimate to proceed on the assumption that there will be a positive impact if support is provided to their disabled sibling. Even if they are not directly providing care, we consider it legitimate to proceed on the assumption that they will benefit from the support being provided to their sibling. By way of example, we note that a recent survey conducted by the charity Sibs found that 30% of the siblings of disabled children surveyed were tired at school because they had not managed to have enough sleep.[45]

4. Improvement in local authority staff well-being

   We note, but do not seek at this stage to monetise, the potential for improvement in local authority staff well-being arising from working with a more efficient, user-friendly legal framework and provision of early support reducing instances where needs of children they are working with escalate.

Option 2: Full implementation of proposals with an assessment threshold where 'the child is likely to be eligible for care and support'

The same types of cost identified in Option 1 (familiarisation, training, increase in assessments, increase in provision of services) will also apply to Option 2, although the magnitude of the ongoing costs (increase in assessments, increase in provision of services) differs.

However, triage costs and legal costs are included as additional ongoing costs. By 'triage' we mean the process of identifying whether or not the threshold for carrying out an assessment is met, and hence whether the case should proceed to assessment.

The narrative below is limited to those cost/benefit areas that differ from those in Option 1.

Costs

Transitional Costs

Transitional costs remain unchanged from Option 1.

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[43] See discussion on significance of WEELLBY value

[44] See paragraph A3.4. "*The Green Book*", HM Treasury (2020)

[45] Sibs*, If Only You Knew. A report into the school experiences of siblings of disabled children* (April 2024) p 5.

Ongoing Costs

1. Increased number of assessments

   Triage is introduced under Option 2 requiring additional social workers' time to determine whether or not the threshold for carrying out an assessment is met, and hence whether the case should proceed to assessment.

Table 9: Annual cost of additional assessments in £million

	Low estimate	Central estimate	High estimate
No. of additional cases requiring triage[46]	23,560	26,180	28,800
Cost of triage	£1.14	£1.27	£1.39
Cost of online assessments for cases that progress past triage	£0.12	£0.30	£0.14
Cost of face-to-face assessments for cases that progress past triage	£1.90	£4.21	£6.94
Cost of advocacy provision during assessment	£0.79	£2.63	£4.82
Total cost[47]	**£3.94**	**£8.24**	**£13.31**

Assumptions:

- The low estimate of the additional cases requiring triage is the difference between the number of EHCP assessments and the number of children in need [CIN] with a disability recorded; the three-year average is the central estimate -/+ 10% low/high estimate. This is the same approach as was adopted under Option 1 for estimating the number of additional assessments. **See discussion above under Option 1, highlighting the risk that this is an underestimate.** Under Option 2 not all of these cases will proceed to assessment. But they will require triage to decide whether an assessment is needed.
- In relation to triage, 5% of all cases require minimal scrutiny of 30 mins to determine whether an assessment is required, and the rest require 2 hours social workers' scrutiny. This estimate is based on expert experience and what we have heard in the work leading up to this consultation.
- 50% of all additional cases that are triaged proceed to an assessment. Note: this an illustrative figure and not an estimate. It is an example of the number of cases that might proceed to assessment depending on the eligibility criteria that are adopted by central Government under this proposal, as the stringency of the criteria will dictate the likelihood that a child satisfies the criteria and meets the threshold for an assessment.
- 20% of all assessments are undertaken online and require 2 hours of a social worker's time to check accuracy of completion. The remaining 80% of assessments are face-to-face and require between 1 to 3 days. Some assessments will take less than 1 day or more than 3 days, but 1-3 days represents the median range. These days may be spread over a longer period of time for instance 3 days over the course of 1 month. This estimate is based on expert experience and what we have heard in the work leading up to this consultation.
- Between 10% to 50% of face-to-face assessments require advocacy provision [30% being the central estimate]. This estimate is based on expert experience and what we have heard in the work leading up to this consultation.

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[46] Rounded to nearest 10

[47] Rounding means the total may not exactly equal the sum of the parts

We invite consultees' views on these assumptions and estimates.

Annual total cost: £8.24 million [central estimate]

Present value: £68.53 million [central estimate]

2. Increased cost of support

The increased number of assessments results in an increase in demand for support. See table 10 below.

Table 10 – Annual cost of additional demand for support in £million

	Low estimate	Central estimate	High estimate
No. of additional assessments	11,780	13,090	14,400
Percentage eligible for support	15%	35%	55%
Cost of direct payments	£2.06	£5.66	£9.25
Cost of short breaks	£3.21	£8.79	£14.37
Cost of 'others'	£0.34	£0.93	£1.51
Total cost	**£5.27**	**£14.45**	**£23.63**

<u>Assumptions:</u>

- 15-55% of newly assessed cases satisfy the eligibility criteria. This is based on the assumption that the system will not operate perfectly. If the system operated perfectly then the higher assessment threshold under Option 2 would identify precisely the same number of eligible children as the lower assessment threshold under Option 1, but with half the number of assessments required. This is because the higher assessment threshold under Option 2 results in assessments being carried only in those cases where it is likely that the child will be eligible. But we assume that Option 2 will not operate perfectly, and the system will result in errors as:
    - the threshold under Option 2 involves a significant evaluative judgment which will not always be exercised correctly; and
    - there is a risk of error inherent in the threshold as, even applied correctly, there is up to a 49% chance that a child who is judged more likely than not to be ineligible for services, is in fact eligible.
- The error rate will be modest. If the system operated perfectly the number of children found to be eligible would be 20-60% (which in numerical terms is the same as the number of children found to be eligible under Option 1). An error rate of 5 in 100 is used to represent a modest proportion of errors, on the basis that the significant majority of cases are assessed correctly.
- 40% of those eligible receive direct payments [at £2780 per child][48], 40% receive respite [at £4,540 per child] and 20% receive access to other support [at £955 per child[49]]. This estimate is based on what we have heard in the work leading up to this consultation.

We invite consultees' views on these assumptions and estimates.

Annual total cost: £14.45 million [central estimate]

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[48] A 5% uplift is added to £2780 to account for additional support provided

[49] Per capita figures rounded to nearest £5

Present value: £120.17 million over 10 years [central estimate]

3. Rise in legal costs

The proposed threshold is assumed to restrict the number of applicants to 50% of the total number who go through the triage process to determine whether an assessment is required. A proportion of the other 50% who are refused an assessment may disagree with the decision and chose to seek judicial review,[50] and seek legal aid funding. It is expected that only a small minority will qualify for legal aid and/or have access to legally aided representation in their area and seek to pursue this option. See table 11 below.

Table 11: Annual legal costs in £million

	Low estimate	Central estimate	High estimate
No. of assessments denied	11,780	13,090	14,400
No. likely to appeal	353	524	720
Requisite increase in legal aid funding	£1.30	£1.96	£2.65
Increased Local authority expenditure	£0.26	£0.39	£0.53
Total cost	**£1.56**	**£2.31**	**£3.18**

Assumptions:

- 3 to 5% of the 50% denied a full assessment of eligibility seek legal redress through the court system. This estimate is based on expert experience and what we have heard in the work leading up to this consultation and is intended to represent a modest proportion of cases resulting in legal disputes.
- The provision of advice and representation to the claimant costs £3,677 based on an average legal aid cost of a civil non-family case.[51]
- Local authorities also face an increase in legal expenditure through seeking advice/representation from counsel during litigation. This is assumed, on a conservative estimate, to be around 20% of the average legal aid cost of a civil non-family case. Legal aid is not available for local authorities but for these purposes we consider provides a reasonable proxy.

Annual total cost: £2.31 million [central estimate]

Present value: £19.21 million over 10 years [central estimate]

Benefits

Transitional Benefits

None identified

Ongoing Benefits

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[50] As discussed in Chapter 18 of the consultation paper, we have not at this stage set out proposals in relation to remedies; if the law does not change, then the route of legal redress would remain that of judicial review.

[51] See https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-january-to-march-2024/legal-aid-statistics-england-and-wales-bulletin-jan-to-mar-2024#civil-legal-aid, fig 11- Non-family category [other non-family], £14.5m/3943

1. Increased scope for home care and reduced reliance on residential care

   As with Option 1, with effective support delivered at an early stage (including short breaks), we assume that parents will be better equipped to continue to care for their children at home, reducing the risk of needs escalating, caring arrangements breaking down and children requiring residential care. See table 12 below.

   Table 12: Annual savings from reduction in demand for residential care, in £million

	Low estimate	Central estimate	High estimate
No of children in residential care	2003	2003	2003
Percentage fall in demand	2%	4%	6%
Reduced annual cost of care	**£13.01**	**£29.04**	**£48.36**

   Assumptions:

   - **With improved access to support parents are better able to care for children at home, which leads to a 4% to 8% reduction in demand for residential care, with 6% being the central estimate. This range is based on anecdotal evidence from what we have heard in our work leading up to this consultation and there is particular risk attached to this estimate. We seek consultees' views on this.**
   - Average weekly cost of residential care for children with disabilities £6,245 to £7,739 with £6,791 the central estimate.[52]

Annual total benefit: £29.04 million [central estimate]

Present benefit: £241.51 million over 10 years [central estimate]

2. Improved well-being of parents and carers

   See the discussion of WELLBYs above, where we set out how we seek to monetise the benefits of improved well-being of parents and carers.

   The following table takes a conservative position to illustrate the benefit.

   Table 13: Annual improvement in life satisfaction, in £million

	Low estimate	Central estimate	High estimate
No. of additional assessments	11,780	13,090	14,400
No. eligible for support	1,770	4,580	7,920
No. of parent carers impacted	884	2,291	3,960
Net gain	**£1.36**	**£7.04**	**£18.26**

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[52] Based on cost date available from Lincolnshire, Thurrock and Brent and with reference to £4153 per resident if able-bodied 2019/20 prices [£4636 in 2023 prices]. See: https://www.pssru.ac.uk/pub/uc/uc2021/services.pdf

Assumptions:

- 15 – 55 per cent of newly assessed cases eligible for support with 35 percent the central estimate
- 50 percent of those eligible for support experience improved well-being.
- Parent carers impacted: 1 per assessment [low and central estimates] 2 per assessment [high estimate]. This estimate is based on what we have heard in our work leading up to the consultation.
- 1 WELLBY is equivalent to £13,000 in 2019 prices. Improved life satisfaction equivalent to 0.1 [low estimate] to 0.3 [high estimate] with 0.2 as the central estimate.

Annual total benefit: £7.04 million [central estimate]

Present benefit: £64.92 million over 10 years [central estimate]

Option 3: Simplification and modernisation of legal framework with no substantive changes to duties, rights and processes.

In the absence of substantive change the impact is likely to be negligible.

Costs

Transitional Costs

1. Training

Social workers can accommodate training within the annual allocation of continuing professional development (CPD).

Ongoing Costs

2. Marginal increased demand for assessments

There will potentially be a non-material increase in assessments as the improved clarity of the law will lead more parents and carers to seek assessments/services to which they or their child are entitled to.

Benefits

Transitional benefits

None identified.

Ongoing benefits

3. Marginal improvement in clarity of assessment requirements for local authority professionals.

Summary of monetised costs and benefits

The central estimate is generally regarded as the most reliable indicator of the likely outcome. Based on this, the central estimate for the NSPV of Option 1 results in the highest NSPV when compared to Options 2 and 3. Whilst Option 2 involves fewer assessments, it introduces the corresponding cost of implementing a triage system to manage application numbers in line with an agreed threshold. Additionally, there are increased legal costs for legal aid and local authorities, as individuals denied the chance to submit an application may appeal the decision in court. The primary factor contributing to the more favourable outcome of Option 1, however, is the savings achieved through a reduction in residential care. The cost of residential care for children with disabilities has been rising at a rate significantly exceeding inflation.

We emphasise that the analysis in this impact assessment is for illustrative purposes, because the most significant costs implications will flow from matters that are for future discussion between central and local government – principally the eligibility criteria that are adopted for disabled children's social care – and hence are an unknown.

Wider impact (considers the impacts of our proposals)

Equality impact

Having researched extensively and consulted widely with a diverse range of interested parties, we have not identified any adverse impacts of our policy on protected characteristics. We have completed the Equality Impact Assessment Initial Screening and are not required to complete a further full assessment.

Health impact

The health impact has been assessed throughout this impact assessment.

Justice impact

The impact on the legal system has been considered, but its full impact cannot be modelled at this stage because we are not yet in a position to develop proposals regarding remedies.[53] That will remain under review during the consultation process and as we prepare our final report and accompanying impact assessment.

Table 14: Options 1 and 2: Summary of Annual costs and benefits, NSPV in £million

	Low estimate	**Central estimate**	**High estimate**
Option 1: Costs			
Transitional costs	1.22	3.96	5.65
Ongoing costs:			
Additional Assessments	5.61	13.95	23.84
Additional Support	7.48	16.40	25.77
Total [ongoing] costs	13.09	30.35	49.61
Option 1: Benefits			
Ongoing benefits			
Reduced residential care	26.02	43.56	64.49

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[53] See Chapter 18 of our full consultation paper.

WELLBY Gain	1.81	8.05	19.92
Total benefits	27.83	51.61	84.41
NSPV over 10 years	**121.83**	**176.31**	**296.35**
Option 2: Costs			
Transitional costs	1.22	3.96	5.65
Ongoing costs			
Additional Assessments	3.94	8.24	13.31
Additional Support	5.27	14.45	23.63
Legal costs	1.56	2.31	3.18
Total [ongoing] costs	10.77	25.00	40.12
Option 2: Benefits			
Ongoing benefits			
Reduced residential care	13.01	29.04	48.36
WELLBY gain	1.36	7.04	18.26
Total benefits	14.37	36.08	66.62
NSPV over 10 years	**28.77**	**90.74**	**215.57**