

UK Legislation & Policies

History of legislation on disability

Developments in Learning Disability Law: To understand developments in Learning Disability Law it is first necessary to understand that the law derives from two main sources, which are:

- ***Acts of Parliament and Statutory Instruments*** enacted under powers given by the Acts. These are known as statutory sources and include European Community Legislation, which automatically becomes part of UK Law statutory sources take precedence over other laws.
- ***Common Law – often known as case law***. This includes decisions by judges in individual cases, which are often, but not always, interpretations of statutory sources. Common Law can include decisions by Tribunals. A pre-requisite of Common Law is a reliable system of reporting decisions. There is a system of precedence in Common Law, based on a hierarchy of Courts, with the Supreme Court as the ultimate UK Court. The Supreme Court is bound by relevant decisions of the European Court of Justice.

Learning Disability Law does draw a distinction between learning disability and mental illness, but there is considerable overlap, which this chronological account will attempt to explain.

1713-44: Common Law drew distinction between learning disability and mental illness before the first statutory sources, which began with the Vagrancy Acts between 1713 and 1744. The Vagrancy Acts allowed detention of “*Lunatics or mad persons*“, which was the 18th century definition of mental illness.

1774-1845: Further legislation followed in 1774 with an Act to regulate private madhouses and the 1845 Lunatics Act included “*Person of unsound mind*”.

1886: The 1886 Idiots Act provided separately for idiots and imbeciles, which was the Victorian definition of learning disability, but the 1890 Lunacy (Consolidation) Act ignored the distinction.

1913: In 1913 the Mental Deficiency Act provided for the segregation of “*mental defectives*” in an ascending order of vulnerability;

1927: The 1927 the Mental Deficiency Act emphasised the need for care outside institutions. It also provided a definition of mental deficiency as “*a condition of arrested or incomplete development of mind existing before the age of 18 years whether arising from inherent causes or induced by disease or injury*”. This definition is very close to the definition of learning disability in Section 1 (4) of the Mental Health Act 1983, as amended by the Mental Health Act 2007. The Section states that learning disability means “*a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning*”.

1930: In 1930 the Mental Treatment Act allowed for voluntary admissions, which was the first time that Parliament considered that anyone might of their own free will, require admission to a psychiatric hospital.

1946: The formation of the National Health Service by the 1946 NHS Act ended the distinction between paying and non-paying patients.

1948: In 1948 the National Assistance Act made provisions in the community, or residential settings for those in need, which came to include people with a mental disorder.

1959: The 1959 Mental Health Act defined mental disorder, which is mental illness as distinct from learning disability. The definition was “*mental illness; arrest or incomplete development of mind; psychopathic disorder; and any other disorder or disability of mind*”. There were further classifications for long term compulsion which were “*mental illness; severe subnormality; subnormality; psychopathic disorder*” but there were treatability tests for the last two categories. 1970:

1970: *The Chronically Sick & Disabled Persons Act 1970* introduced by North West MP Alf Morris was the first in the world to recognise and give rights to people with disabilities. Alf Morris, later Lord Morris of Manchester, went on to become the first Minister for the Disabled. He was also a good friend to Rescare’s founder, Richard Jackson and he is Patron to Rescare. The Act was a groundbreaking step on the road to equality, and forms a basis upon which much subsequent legislation is grounded. Yet its introduction involved an element of luck. Alf Morris, who had personal experience of the effects of disability within his own family, won first place in the 1969 House of Commons private members ballot, and thus an opportunity to introduce a bill that could become law. The bill faced opposition from within Morris’s own Labour party and was almost scuppered when the 1970 General Election was called by Prime Minister Harold Wilson. But it survived in the short ‘wash up’ period before the election and became law, the first of its kind in the world. The 1970 act has been described as ‘a Magna Carta for the disabled’: it was revolutionary in transforming official policy, setting down specific provisions to improve access and support for people with disabilities. Summary of the 1970 Act: The Act placed responsibilities on Local Authorities for the provision of welfare services and housing, extending to the provision of practical assistance for people in their own homes, meals at home or community centres, and the adaptation of houses to meet their needs. The Act gave people with disabilities the right to equal access recreational and educational facilities, included providing assistance with travel, to be provided by Local Authorities. Local Authorities were also given the duty of providing special educational facilities for children who were both blind and deaf. This provision was extended to include autism and dyslexia with the expectation that the level of education provided was to the same level as that available in other local authority schools. A code of practice was introduced for buildings that were open to the public, requiring them to provide parking, where applicable, and sanitary facilities for people with disabilities. Local Authorities were also required to provide disabled access to public toilets, and empowered to insist on similar facilities in areas such as universities, railway stations, shops and offices. Disabled badges for cars were introduced with exemptions for parking and other access. Provision was also made for the use of invalid carriages (now mobility scooters etc.) on public roads, and also on footpaths and pavements. Whilst not a statutory requirement the 1970 Act made it clear that representation of people with knowledge and experience of disability should be increased on local authority committees and other public bodies. The Act made significant changes in the area of mental health. It stated that young and elderly patients

were to be separated in wards in hospitals and in local authority provided residential accommodation; and that there should be accommodation for people with mental health disorders and substantial disabilities *separate* from that for the elderly. Whilst Minister for Disabled People, Alf Morris went on to introduce benefits for disabled people and their carers, including a mobility allowance. Subsequent legislation has built on the 1970 Act.

1983: *The Mental Health Act* retained the broad definition of mental disorder referred to in the 1959 Act but the classifications changed to “*mental illness (undefined); severe mental impairment; mental impairment or psychopathic disorder*”. It has been amended by the 2007 Mental Health Act where there will be a further description.

1986: *The Disabled Persons Act 1986*: required social services to provide a written assessment of disabled people and to look at the abilities of informal carers when deciding on the level of care needed.

1990: *NHS and Community Care Act 1990*: The Act was brought in to promote community care. Local social service departments have an overall responsibility for community care and have to publish a regular plan about how this care will be delivered. The responsibility places a duty on authorities to assess people for social care and provide the support they require. The act established the familiar procedures of ‘care management’ (social services) or ‘care programme approach’ (NHS) which the statutory departments now operate to. A mixed economy of care was promoted with the independent, private and voluntary sectors being encouraged to provide resources.

1995: *The Disability Discrimination Act 1995* gives rights to disabled people to prevent discrimination on the grounds of disability. It is unlawful to discriminate in relation to employment, the provision of goods and services, the management, buying or renting of land or property, education and transport. The act was introduced over a period of time. In 2000 the Disability Rights Commission was established with the task of upholding the rights enshrined in the 1995 act.

1995: *Carers (Recognition and Services) Act 1995*: Carers’ needs are recognised in this legislation. It gives the right to have their needs taken into consideration when services are being assessed under the NHS and Community Care Act for an individual they care for.

1996: *Community Care (Direct Payments) Act 1996*: This gives authority for local social service departments, after assessing a person’s need, to make grants instead of giving a service. This then enables an individual to purchase and administer their own care services.

1998: *The Human Rights Act 1998*: This legislation adopted the European Convention on Human Rights into British law when it came into force in October 2000. There are 18 articles or protocols which explain fundamental human rights. It makes it unlawful for a public authority to breach the rights set out in the convention. The act is not designed to bring actions against individuals.

2000: *Care Standards Act 2000*: The National Care Standards Commission arose from this act and they took over the responsibility for the registration and inspection of services from local authority departments. Services were inspected against a national standard with sanctions being imposed on those providers who did not meet the necessary criteria. The

National Care Standards Commission was replaced in April 2004 by the Commission for Social Care Inspection and the Commission for Healthcare Audit and Inspection.

2000: *Carers and Disabled Children Act 2000*: Young disabled people aged 16 and 17 became eligible to receive direct payments to purchase their own care support. Carers are also given the right to be assessed and for this to be taken into consideration when supplying services to a disabled person. Their ability to continue caring long-term together with their own health or disability needs is identified. In addition the local authority can now directly support the carer by offering them services to facilitate their caring role (this was not available under Carers (Recognition and Services) Act 1995).

2005: *The Mental Capacity Act 2005*: this important legislation is discussed separately [here](#).

2007: *Mental Health Act* amended and reformed the Mental Health Act 1983. It defines mental disorder as “*any disorder or disability of the mind*”. The definition is wide enough to include not only mental illness, but also learning disability and personality disorders. The definition of learning disability in Section 1(4) is “*a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning*”. Because this definition would place learning disability within the definition of mental disorder, Section 1(2A) provides that learning disability will not constitute mental disorder unless it is “*associated with abnormally aggressive or seriously irresponsible conduct*” on the part of the patient. This proviso is important because neither Sections 3 nor 7 of the Act will apply to a learning disabled person unless the Section 1 (2A) qualification is met. Section 3 allows admission of a patient to hospital and detention there in pursuance of an application. The application must include a written recommendation by two registered medical practitioners. Section 7 allows receipt of a patient of 16 or over into guardianship in pursuance of an application. As with Section 3 the application must include a written recommendation by two registered medical practitioners. The Section 1 (2A) requirement does mean that guardianship will not always be available for a patient with learning disability. Accordingly, the provisions of the Mental Capacity Act 2005 may be more appropriate for patients with learning disability.

2008: United Nations introduced the *UN Convention on the Rights of Persons with Disabilities*, which obliged members to promote equal rights and root out discrimination.

2012: On 27 March, 2012 the Coalition government’s Health and Social Care Bill gained Royal Assent to become the *Health and Social Care Act (2012)*. This legislation, which is only just beginning to implemented, is discussed [here](#) .

Please note: The above list of legislation is not exhaustive.

Valuing People and *Valuing People Now* have not been included above since, whilst highly significant, they are not Acts, but White Papers. The role and status of White Papers is the matter of some debate, but a broad definition might be ‘a means of presenting government *policy preferences* or inviting consultation, often prior to the introduction of legislation’. Information on Valuing People and Valuing People Now may be found [here](#) .

Legislation and policies that support the human rights and inclusion of individuals with learning disabilities

Policies that are designed to promote the human rights, inclusion, equal life chances and citizenship of individuals with learning disabilities.

- **The Chronically Sick and Disabled Persons Act 1970**

An Act to make further provision with respect to the welfare of chronically sick and disabled persons; and for connected purposes.

- **The Disabled Person Act 1986**

An Act to provide for the improvement of the effectiveness of, and the co-ordination of resources in, the provision of services for people with mental or physical handicap and for people with mental illness.

- **The Five Accomplishments. 1987 John O'Brien and Connie Lyle O'Brien**

Advocate of **Person Centred Planning**. Identified five key areas to leading to life fulfilment.

- **The National Health Service and Community Care Act 1990**

An Act to make further provision about health authorities and other bodies constituted in accordance with the National Health Service Act

- **The Community Care (*Direct Payments*) Act 1996**

An Act to enable local authorities responsible for community care services to make payments to persons in respect of their securing the provision of such services; and for connected purposes.

- **The Human rights act 1998**

An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.

- **The UN Convention on the Rights of Persons with Disabilities 2008**

Convention on the Rights of Persons with Disabilities. To promote, protect and ensure the full and equal enjoyment of all human *rights* and fundamental freedoms by all *persons with disabilities*, and to promote respect for their inherent dignity.

- **The Care Standards Act 2000 (To be revised april 2015)**

An Act to establish a National Care Standards Commission; to make provision for the registration and regulation of vulnerable people.

- **The Carers and Disabled Children Act 2000**

An Act to make provision about the assessment of carers' needs; to provide for services to help carers; to provide for the making of payments to carers and disabled children aged 16 or 17 in lieu of the provision of services to them; and for connected purposes.

- **Valuing People 2001/ valuing People Now 2013**

Government white paper. A New Strategy for Learning Disability for the 21st Century.

- **The Mental Capacity Act 2005**

The Mental Capacity Act 2005 covers people in England and Wales who can't make some or all decisions for themselves. The ability to understand and make a decision when it needs to be made is called 'mental capacity'.

- **The Disability Discrimination Act 1995/2005**

An act protecting against discrimination within employment. trade organisations and qualifications bodies. access to goods, facilities and services.

- **The Equality Act 2010**

An act that merges, simplifies, strengthens and harmonises the current legislation to provide Britain with a new discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

The nine main pieces of legislation that have merged are:

- *the Equal Pay Act 1970*
- *the Sex Discrimination Act 1975*
- *the Race Relations Act 1976*
- *the Disability Discrimination Act 1995*
- *the Employment Equality (Religion or Belief) Regulations 2003*
- *the Employment Equality (Sexual Orientation) Regulations 2003*
- *the Employment Equality (Age) Regulations 2006*
- *the Equality Act 2006, Part 2*
- *the Equality Act (Sexual Orientation) Regulations 2007*

The Care Quality Commission. CQC

An executive non-departmental public body of the Department of Health. It was established in 2009 to regulate and inspect health and social care services in England.

Links

National Mencap.

<https://www.mencap.org.uk/about-us>

East Kent Mencap.

<http://www.eastkentmencap.co.uk/>

Barnet Mencap

<http://www.barnetmencap.org.uk/>

The Foundation for People with Learning Disabilities.

<http://www.learningdisabilities.org.uk/help-information/learning-disability-a-z/l/learning-disabilities/>

The British Institute of Learning Disabilities. (BILD)

<http://www.bild.org.uk/>

The National Autistic Society. (NAS)

<http://www.autism.org.uk/>

The Down's Syndrome Association.

<http://www.downs-syndrome.org.uk/>

The Disability Law service

<http://www.dls.org.uk/>

John O'Brien's 5 Accomplishments.

http://en.wikipedia.org/wiki/John_O%27Brien_%28advocate%29

Rescare.

<http://rescare.org.uk/>