

# ADOPTION SUPPORT SERVICES ASSESSMENT (ASSA)

## Practice Guidance

### Statutory Framework, Legal Duties, and Rights

Under the Adoption and Children Act 2002, Adoption Support Services Regulations 2005, and Chronically Sick and Disabled Persons Act 1970

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*Based on the CoramBAAF framework. CoramBAAF's copyright in their published materials acknowledged.*

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*“Parents who can no longer cope, or no longer feel they can keep their family safe, have to take the heartbreaking decision to legally abandon their son or daughter.”*

Damien Dobson, Solicitor

# 1. Executive Summary

This document reflects a structured interpretation of the statutory framework derived from legislation and case law. It sets out the legal duties arising under the Adoption and Children Act 2002, the Adoption Support Services Regulations 2005, and the Chronically Sick and Disabled Persons Act 1970 as established by the text of those statutes and the case law cited. Its purpose is to ensure all social workers and families understand the legal framework for adoption support assessment and provision.

## Perspective and Legal Status

This document is produced by LOGOS Bound and is written from the perspective of adoptive families asserting their statutory entitlements. It is not neutral as between families and local authorities. It reflects the view that statutory entitlements exist to be enforced and that the framework described here represents what the law requires of local authorities.

It is not itself legislation, statutory guidance issued under section 7 of the Local Authority Social Services Act 1970, or DfE guidance. It reflects a legally defensible interpretation of the statutory duties derived from the text of the statutes and the case law cited. Authorities acting outside the framework described here are operating at heightened legal risk. Professional judgment remains relevant at every stage, but that judgment must be exercised within the legal framework this document describes, not as a substitute for it.

The document mirrors the format and register of Clements and Aiello, *Assessing the Needs of Disabled Children and their Families* (University of Leeds, July 2023), which is widely cited by local authorities as evidence of the social model they claim to follow. Like that document, this guidance applies established statutory and case law authority to a specific practice context. Unlike statutory guidance, it does not override lawful local frameworks. It provides families and practitioners with a clear statement of what the law requires so that those frameworks can be tested against it.

## Legal Status of Regional Adoption Agencies

Regional Adoption Agencies (RAAs) are NOT separate legal entities. They are arrangements between local authorities. The statutory duties under ACA 2002 and ASSR 2005 remain with the local authority. When you work for an RAA, you are exercising LA functions and LA duties apply.

## The Core Principle

Assessment informs provision. Where assessment identifies that support is necessary, there is a strong presumption that support should be provided. Resources may be considered at the necessity threshold stage, but once necessity is established the CSDPA 1970 section 2 mandatory duty arises and provision cannot be avoided or diluted by resource constraints (Rixon). Budget constraints alone cannot justify refusing to meet assessed statutory needs.

## 2. The Legal Framework

### 2.1 Primary Legislation

Legislation	Key Provisions
Adoption and Children Act 2002	Section 3: Duty to maintain adoption support services. Section 4: Assessments and plans
Adoption Support Services Regulations 2005	Regulations 13–21: The complete assessment, plan, decision, and review framework
Children Act 1989	Section 17: General duty to children in need
Children Act 2004	Section 10: Duty to co-operate. Section 11: Duty to safeguard
Chronically Sick and Disabled Persons Act 1970	Section 2: Mandatory duty — ‘shall be the duty’ once necessity established
Human Rights Act 1998	Section 3: Interpretation of legislation. Section 6: Acts of public authorities

### 2.2 The Adoption Support Services Regulations 2005

Regulation	Requirement
Regulation 13	Who has the right to request an assessment
Regulation 14	How the assessment must be carried out
Regulation 15	Financial support assessment
Regulation 16	Preparation of the support plan
Regulation 16(4)	MANDATORY: Nominate person to monitor provision
Regulation 17	Notice of proposal — family’s right to make representations
Regulation 18	Notice of decision — must include reasons
Regulation 19	Review of adoption support services
Regulation 21	Urgent cases — requirements may be disapplied

#### Regulation 16(4): Mandatory Coordinator

The local authority **MUST** nominate a person to monitor the provision of adoption support services in accordance with the plan. This is a coordinator role. The family should **NOT** be left to case-manage their own services.

## 2.3 Key Case Law

Case	Principle
R v Islington LBC ex parte Rixon [1997] ELR 66	High Court. Sedley J emphasised that once a local authority is satisfied that services are necessary under section 2 CSDPA 1970, the duty to provide is mandatory. Resources may be considered at the necessity threshold stage but cannot be used to avoid or dilute the duty once necessity is established. This is a CSDPA case decided on CSDPA grounds and applies directly to disabled children's services.
R (JL) v Islington LBC [2009] EWHC 458 (Admin)	High Court. Once the CSDPA duty is established, eligibility criteria cannot be applied to limit provision. Assessment and provision decisions must be kept as two distinct processes. Criteria must not be applied mechanistically. Subsequent case law emphasising that once a duty arises provision cannot be restricted by eligibility criteria or resource constraints. Cited by DfE departmental advice on short breaks at paragraphs 4.15–4.16 and by Clements and Aiello (2023).
R v East Sussex CC ex p Tandy [1998] AC 714	House of Lords. Where statute imposes a duty to meet assessed need, resources are not a lawful ground for refusal once that duty has arisen. The duty is to the individual, not a target duty subject to resources. Note: Tandy concerned education law. Rixon and Islington are the primary CSDPA authorities. Tandy's general principle is consistent with and supported by both.
R (Barry) v Gloucestershire CC [1997] AC 584	House of Lords. Resources may be considered when the local authority is determining whether services are necessary at the threshold stage. Where an authority relies on eligibility standards or criteria that reflect resource considerations, those must be sufficiently transparent and capable of consistent application, and the individual decision must be supported by recorded reasoning. Barry's principles have been applied broadly. However subsequent case law including Rixon and Islington emphasises that once a duty arises provision cannot be restricted by eligibility criteria or resource constraints, and that assessment of need must be kept separate from decisions about provision. See section 2.4 and 2.5 below.

## 2.4 The Two-Stage Analysis: Necessity and Needs

## ● Critical: Two Distinct Stages

Understanding the distinction between the necessity threshold and the needs that flow from it is essential to lawful decision-making. A lawful process requires that assessment of need precedes any resource allocation. Any system which applies indicative or standardised provision prior to individualised assessment risks unlawfully predetermining outcomes. The two-stage structure below reflects the statutory minimum, not a higher standard.

### **Stage One — The Necessity Threshold**

Before the CSDPA mandatory duty arises, the authority must be satisfied that it is necessary to provide services to meet the child's needs. In accordance with *R v Gloucestershire CC ex parte Barry*, local authorities may take account of resources when determining whether a service is necessary. However, that judgment must still be based on an individualised assessment of the specific child's needs and must not be predetermined by standardised or indicative provision applied before assessment is complete. The authority exercises professional judgment about what is necessary for this child. This is a relatively high bar — the statute requires necessity, not mere benefit or desirability.

### **Stage Two — Meeting the Needs**

Once the necessity threshold is crossed, the mandatory duty arises under section 2 CSDPA. *Barry* permits resources to be considered when determining whether a service is necessary, but it does not remove the need for an individualised, reasoned assessment of each child's specific circumstances, and once necessity is established the section 2 duty is mandatory. The question at this stage is whether the provision offered is sufficient, on a lawful and reasoned view, to meet the needs the authority has assessed as necessary to meet.

### **Why this matters in practice**

The most common unlawful pattern is this: authority accepts that some services are necessary and provides them, then invokes *Barry* to justify reducing provision below the level the assessment identified as necessary. *Barry* does not authorise this. *Barry* permits resource considerations when determining necessity but does not remove the requirement for an individualised reasoned assessment. Subsequent case law including *Rixon* and *Islington* establishes that once necessity is determined and the duty arises, provision cannot be restricted by resource constraints or eligibility criteria alone. The focus is whether provision is sufficient, on a lawful and reasoned view, to meet the assessed need.

### **Provision of services as evidence the threshold was crossed**

Where an authority has provided services on the basis that they are necessary to meet disability-related need, that is strong evidence that the necessity threshold has been crossed in relation to those assessed needs. At that point the focus shifts to whether the level of provision is sufficient, on a lawful and reasoned view, to meet those needs. *Barry*'s permission to consider resources when determining necessity does not extend to reducing provision below the level the authority has assessed as necessary without fresh individualised assessment and recorded reasoning.

## 2.5 Barry: What It Does and Does Not Authorise

R (Barry) v Gloucestershire CC [1997] AC 584 is frequently cited by local authorities to justify resource-led decisions on provision for disabled children. The following analysis sets out precisely what Barry does and does not authorise.

### The Correct Barry Formulation

In accordance with R v Gloucestershire CC ex parte Barry, local authorities may take account of resources when determining whether a service is ‘necessary’. However, once a service is assessed as necessary, section 2 CSDPA 1970 imposes a duty to provide it. That judgment of necessity must be based on an individualised assessment and must not be predetermined by standardised or budget-led frameworks.

Barry DOES permit	Barry DOES NOT permit
Resource considerations at the necessity threshold: whether services are necessary at all	Reducing provision below the level the authority has lawfully assessed as necessary, unless that assessment is revisited through a fresh, reasoned, individualised reassessment
The authority to set eligibility standards or criteria that take resources into account, provided those standards are sufficiently transparent to be capable of consistent application	Panel decisions without individualised assessment or recorded reasoning applying identifiable standards to this child’s specific circumstances
Professional judgment about what constitutes an acceptable standard of living	Overriding a professional assessment that has already established necessity on resource grounds
Barry concerned adult social care, but its principles have been applied more broadly. However cases concerning children’s services (including Rixon and JL) emphasise the importance of separating assessment of need from resource allocation and the absolute nature of the duty once necessity arises	Barry cannot be applied to children’s CSDPA cases as if Rixon and Islington do not exist. Subsequent case law emphasising separation of stages and the mandatory duty once necessity established must be read alongside Barry
A necessity determination based on an individualised assessment with recorded reasoning demonstrating how professional judgment was reached for this child	A panel decision that reduces provision without individualised assessment, without recorded reasoning, and without a fresh professional assessment demonstrating why lesser provision is sufficient

### Barry and the Sufficiency Principle

Even accepting Barry at its highest, the necessity determination must be based on an individualised assessment. Where a public authority relies on eligibility standards or criteria when determining necessity, those standards must be sufficiently transparent and

intelligible to be capable of consistent application, and each individual decision must be supported by recorded reasoning that demonstrates how the standard was applied to that person's specific circumstances. A panel applying a standardised package without individualised assessment and without recorded reasoning does not satisfy these requirements regardless of whether criteria are published.

## 2.6 The Equality Act 2010

The Public Sector Equality Duty under section 149 of the Equality Act 2010 requires local authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between persons who share a protected characteristic and those who do not. Disability is a protected characteristic.

In the ASSA context this means:

- Eligibility criteria that have a disproportionate impact on disabled children must be justified as a proportionate means of achieving a legitimate aim
- Assessment processes must make reasonable adjustments for disabled children and their families
- Decisions that systematically under-provide for disabled children without objective justification may engage the duty to advance equality of opportunity
- The PSED must be considered in decision-making, not merely acknowledged — *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 confirms the duty requires genuine consideration. *McCombe LJ* set out twelve principles for what genuine PSED compliance requires, including that decision-makers must be properly informed of the duty, must approach it with an open mind, must consider the duty in substance and not merely by ticking a box, and must consider it before and at the time of the decision not after the event. A PSED compliance exercise conducted after the decision is made is not lawful compliance.

### **i** PSED and the CSDPA

The PSED does not replace the CSDPA mandatory duty. It operates alongside it. A decision-making process that fails to have due regard to the PSED when determining necessity under CSDPA may be vulnerable on both grounds simultaneously. For adopted disabled children, the PSED is engaged at the assessment stage, the necessity determination, and the decision on provision.

## 2.7 The CoramBAAF Framework

This guidance applies the CoramBAAF assessment framework for adoption support (Caroline Thomas, CoramBAAF 2024). CoramBAAF's copyright in their published materials is acknowledged throughout. References to 'the CoramBAAF framework' describe their published approach to adoption support assessment. CoramBAAF's endorsement of this guidance is not claimed.

## 3. What is an ASSA?

### 3.1 Definition

An Adoption Support Services Assessment (ASSA) is a statutory assessment under Section 4 of the Adoption and Children Act 2002, conducted in accordance with the Adoption Support Services Regulations 2005.

#### ASSA Is Not a Family Help Assessment

A Family Help Assessment (FHA) is a different assessment under different legislation with different purposes. Adopted children are entitled to an ASSA under the ACA 2002/ASSR 2005 framework. The ASSR 2005 framework is needs-led. The FHA framework serves a different statutory purpose. Do not substitute one for the other.

### 3.2 Purpose

The Explanatory Notes to the ACA 2002 (paragraph 32) state that the assessment is intended:

- To provide a mechanism to assist adopted children and their families in accessing adoption support services
- To facilitate a planned and co-ordinated support package
- To link with other local authority functions and education/health services
- To help adoptions succeed

#### The Framework Is Designed to Provide Support

The purpose of ASSA is to facilitate support, not to gatekeep or deny it. The legislative intent is 'to help adoptions succeed' through 'a planned and co-ordinated support package.'

### 3.3 Who Can Request an ASSA?

Under Regulation 13, the following persons have the right to request and receive an assessment:

- Adoptive parents
- Adopted children
- Birth parents and former guardians
- Children of adoptive parents (birth children in the home)
- Children of former partners of adoptive parents
- Any person the local authority considers to have a significant and beneficial relationship with an adopted child (Regulation 13(2)(c))

#### Natural Siblings

Natural siblings of an adopted child are not expressly listed in section 3(1) ACA 2002 or Regulation 13(1). They may fall within Regulation 13(2)(c) as persons with a significant and beneficial relationship with the adopted child, but this is at the local authority's discretion under Regulation 13(3) rather than an entitlement. Families seeking an ASSA that addresses sibling needs should request the assessment in the adoptive parents' own right under Regulation 13(1), citing the whole family assessment requirement in Regulation 14(2).

### **i** Adopted Children with Care Orders

An adopted child remains an adopted child in law regardless of any subsequent Care Order. The right to request an ASSA under section 4 ACA 2002 belongs to adoptive parents permanently. It is not extinguished by a Care Order or by the child being in local authority care. If the ASF is being accessed for an adopted child in care, that confirms adopted child status for these purposes. The authority cannot simultaneously treat a child as adopted for ASF purposes and deny adoptive parents the right to an ASSA.

## 3.4 The Adoption Support Fund and the Statutory Duty

The Adoption and Special Guardianship Support Fund (ASGSF) is a discretionary central government fund administered by the DfE that provides therapeutic support funding for adoptive families. It is not a statutory entitlement. It is a separate and parallel source of support that does not discharge or substitute for the local authority's statutory duties under the ASSR 2005 and the ACA 2002.

### **●** The ASF Does Not Discharge the Statutory Duty

A local authority's duty under section 4 ACA 2002 and the Adoption Support Services Regulations 2005 is owed by the local authority. That duty is not discharged by the Secretary of State making discretionary funding available through a separate scheme. The following are distinct and cumulative entitlements:

- The right to request a statutory ASSA under Regulation 13
- The right to a Regulation 16 plan covering all assessed needs
- The right to ASF-funded therapeutic provision where eligible

An authority that directs a family to the ASF instead of conducting a statutory ASSA, or that treats ASF-funded provision as discharging its Regulation 16 plan obligation, is conflating two distinct frameworks. The ASF funds specific therapeutic interventions. The ASSR 2005 requires a holistic assessment of all adoption support needs including practical support, short breaks, financial support, and coordination — most of which the ASF does not fund.

Specifically: (1) Changes to the ASF including reductions in the fair access limit do not reduce the local authority's statutory obligations under the ASSR 2005. (2) ASF exhaustion does not terminate the local authority's duty. (3) The local authority cannot

discharge its Regulation 16 plan obligation by producing an ASF application in its place.  
 (4) Where a disabled adopted child has needs that fall within section 2 CSDPA 1970, those needs must be met through the CSDPA mandatory duty regardless of ASF availability or limits.

## 4. ASSA Process Flow

Step	Requirements
STEP 1: Receive Request (Reg 13)	Person entitled under Reg 13 requests assessment. Acknowledge promptly. Check if child is disabled — CSDPA will also apply.
STEP 2: Conduct Assessment (Reg 14)	Interview person and adoptive parents. Consider needs of whole family. Consult Health (ICB) and Education (LEA). Identify ALL needs. Document what is NECESSARY. Prepare written report.
STEP 3: Prepare Plan (Reg 16)	Draft plan reflecting ALL assessed needs. Specify all services. Set objectives and timescales. NOMINATE COORDINATOR (Reg 16(4)) — MANDATORY.
STEP 4: Notify Family (Reg 17)	Send notice of proposed decision. Include draft plan. Allow time for representations. This is the FAMILY'S right, not a budget negotiation.
STEP 5: Consider Representations	Review representations. Adjust plan UPWARD if additional needs identified. Do NOT use this stage to negotiate down.
STEP 6: Make Decision (S.4(4))	Decide WHETHER to provide services. If YES: proceed. If NO: must have lawful reason — budget alone is not sufficient. Consider Article 8.
STEP 7: Notify Decision (Reg 18)	Send written notice. Include REASONS. Include final plan. Include name of Reg 16(4) coordinator.
STEP 8: Provide and Monitor	Deliver services per plan. Coordinator monitors ALL provision across all agencies. Review plan regularly (Reg 19).

## 5. CoramBAAF Core Assessment Principles

Source: CoramBAAF 'Example form for recording an assessment for adoption support' (Caroline Thomas, © CoramBAAF 2024). CoramBAAF states: 'The relationships that are developed with the child and family during the assessment process should be therapeutic. The process should be child-centred and involve active listening by professionals.'

## 5.1 The Seven Core Principles

Assessments for adoption support must be:

- Supportive and sensitive: The process of being assessed can be stressful. Families may need information, reassurance, and practical help.
- Non-blaming: Adoptive parents should not be judged or pushed out of the assessment. Recognise how hard it is to parent a child who is unhappy and challenging.
- Engaging: Engage all family and household members including children. Consider whether family members need to be seen together or separately.
- Transparent: Be honest about services that are not available, thresholds, and professional uncertainties about what would help.
- Adoption-informed: All professionals must understand the particular issues adopted children and their families face relating to adoption and childhood maltreatment.
- Sensitive to diversity: Recognise particular issues faced by LGBTQ+ adoptive parents and families with members from different ethnic backgrounds.
- Timely: Delays have negative impacts on adoptive families, with difficulties escalating during waiting periods.

### Information Sharing

Children and their families should only have to provide information ONCE. Information should then be shared appropriately with other professionals. Families should not be asked to repeat information they have already provided.

## 6. Planning the Assessment

Before undertaking an assessment, there should be a plan. This implements Regulation 14(2). The following must be determined before the assessment begins:

- Who from the family/household should be included?
- Which other professionals/agencies should be involved (school, health, OT, EP, SALT)?
- Will the child be seen separately?
- Who should lead the assessment?
- Are there specific issues affecting how assessment is conducted?
- Where should the assessment be conducted?
- Has consent for information sharing been obtained?

### Regulation 14(4): Mandatory Notification

If at any time during the assessment it appears the person may need services from Health (ICB) or Education (LEA), the local authority MUST notify that body. This is a mandatory obligation, not a discretionary referral. Identify relevant agencies at the planning stage so notification happens promptly.

## 7. Conducting the Assessment (Regulation 14)

Requirement	Regulation
Interview the person being assessed (and adoptive parents if child)	Reg 14(3)(a)
Consider needs of the whole adoptive family	Reg 14(2)
Have regard to prescribed matters	Reg 14(1)
Prepare a written report	Reg 14(3)(b)
Consult with Health (ICB)	Reg 14(4)
Consult with Education (LEA)	Reg 14(4)

The assessment must identify ALL needs, including:

- Therapeutic needs (trauma, attachment, mental health)
- Practical support needs (short breaks, respite, direct support hours)
- Financial support needs
- Educational support needs
- Health needs
- Disability-related needs (which trigger CSDPA mandatory duties)

### ● The CSDPA Connection

Many adopted children have EHCPs, indicating they meet disability criteria. If the child is disabled AND assessment establishes that CSDPA services are necessary to meet their needs, section 2 CSDPA applies: 'it SHALL BE THE DUTY of that authority to make those arrangements.' Note: Having an EHCP does not automatically trigger CSDPA duties — the authority must be 'satisfied' that the specific services are 'necessary.' However, the EHCP is powerful evidence of what is necessary — it documents state-assessed needs in a statutory document commissioned and funded by the same authority.

## 8. Documenting Necessity: Language and Evidence

### 8.1 Evidencing Necessity

Where services are identified as necessary, the assessment must clearly document the evidential basis for that conclusion. For each need identified as requiring provision, the assessment should set out:

- The specific need identified (what is the problem?)
- The impact on the child/family if unmet (what happens without support?)
- Why the proposed service is required to meet that need (why this intervention?)
- Why lesser provision would be insufficient (why this level/intensity?)

### ✓ Professional Evidence

Conclusions regarding necessity should be evidence-based and, where appropriate, supported by professional input (EP, OT, SALT, CAMHS, therapeutic specialists). Professional recommendations should be explicitly referenced in the assessment. This evidential discipline makes it significantly harder to justify downscaling provision later and creates a strong record for complaints, Ombudsman, or judicial review purposes.

## 8.2 The Real Battlefield: Assessment Language

### ● The Most Common Mechanism of Unlawful Denial

The most common attempt to avoid provision is not to argue against the law but to water down the assessment itself — avoiding the word ‘necessary,’ framing needs as merely beneficial, and preventing the evidential triggers from being recorded. Practitioners must resist this pressure.

Once necessity is properly recorded in an assessment:

- CSDPA mandatory duty is triggered (for disabled children) — Rixon
- Assessment and provision must be kept separate — Islington
- Criteria cannot be applied to limit provision — Islington
- Grounds for lawful refusal become very limited

The purpose of precise language is to ensure the assessment record accurately reflects the professional’s genuine conclusion. If that conclusion is that a service is necessary to meet the child’s needs, that word should be used. If that conclusion is that a service would be helpful but is not necessary, that should be recorded honestly instead. Do not soften language to make panel approval easier — that produces an assessment that does not accurately reflect professional judgment and may result in duties not being discharged. Do not use mandatory language where the professional conclusion does not support it — that produces an assessment that will not withstand scrutiny and may undermine the family’s case. The discipline required is accuracy, not strategy.

Use accurate language where genuinely warranted	Avoid language that obscures genuine professional judgment
necessary — where services are genuinely necessary	would be helpful — where necessity exists but is understated
required — where requirement exists	might benefit — where benefit is certain but necessity is understated
essential — where essential	could consider — where consideration has produced a clear conclusion
without which [specific documented harm]	it would be nice if — where the need is real but the language is euphemistic

the child's needs cannot be met without	it would be useful to — where it is more than useful
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### **⚠ Language Accuracy — Not Word Engineering**

The purpose of precise language is to ensure the assessment accurately reflects genuine professional judgment. Courts distrust assessments that appear drafted to trigger legal duties rather than describe clinical or social reality. Use mandatory language where your professional judgment genuinely supports it. If you are uncertain whether a service is necessary, record that uncertainty and the reasoning process. Accuracy protects both the family and the authority.

The difference between necessary and would be helpful is not merely semantic. It determines which legal duties apply. But the choice must reflect honest professional judgment, not strategic drafting.

## **9. Typical Areas of Identified Need**

In line with Regulation 14, the assessment must consider the full range of needs experienced by adopted children and their families. This section is not exhaustive.

### **9.1 Education, Health and Care Needs**

Many adopted children are disabled within the meaning of the Children Act 1989 and the Equality Act 2010. Where this is the case, the ASSA should consider whether the child:

- Requires an Education, Health and Care Needs Assessment
- Has unmet speech and language therapy (SALT) needs
- Requires Occupational Therapy for sensory, motor, or functional needs
- Would benefit from CAMHS or neurological assessment where trauma has had a neurodevelopmental impact
- Has been excluded, school-refused, or experienced educational failure

### **9.2 Therapeutic Support**

In many cases, therapeutic intervention is a clinical necessity to secure attachment, regulate emotions, and reduce safeguarding risk, not merely a desirable addition:

- Dyadic Developmental Psychotherapy (DDP)
- Theraplay and other attachment-based therapies
- EMDR or trauma-informed CBT
- Parent-child psychotherapy
- Sibling support programmes

## 9.3 Parenting Capacity and Carer Needs

Where adoptive parents are disabled, ill, or under significant strain, the support plan should integrate practical assistance:

- Respite care and short breaks (under CSDPA 1970)
- Direct payments to hire in-home support
- Parenting therapy or coaching
- Help with home adaptations, transport, or night care

## 9.4 Sibling Dynamics and Safeguarding

### ● Sibling Safeguarding — Critical Principle

Where support for one sibling is essential to protect the welfare of another, this creates an enhanced duty to assess and provide services. Sibling-on-sibling harm must be treated with the same seriousness as any other safeguarding concern. Each child in a sibling group must have their needs assessed distinctly. A single pooled package may fail all children if it does not address the specific dynamics between them.

# 10. Preparing the Plan (Regulation 16)

## 10.1 When a Plan is Required

Under Section 4(5) ACA 2002, where the local authority decides to provide adoption support services to be provided on more than one occasion, it **MUST** prepare a plan.

## 10.2 Plan Requirements

The plan must specify:

- The services to be provided
- The objectives of the plan
- How services will meet identified needs
- Timescales for provision
- Review arrangements

### ● Regulation 16(4): The Coordinator — Mandatory

Regulation 16(4): 'The local authority must nominate a person to monitor the provision of adoption support services in accordance with the plan.' This is not optional. The nominated coordinator's role is to monitor the implementation of the plan, liaise with health, education, and social care providers to ensure services in the plan are being delivered, chase any gaps or failures in provision, and report to the family on progress. The family's role is to PARENT. They should not be left to case-manage the delivery of services that the plan specifies.

## 11. Service Coordination

The ASSA should coordinate services across Health, Education, and Social Care into one integrated package. This reflects the statutory requirement under Regulation 16(4) that a named person monitors the implementation of the plan. In practice, good implementation of this statutory requirement means the family does not have to case-manage the delivery of services that the plan specifies — the coordinator does that.

### Integration Is Key

The purpose of the ASSA is to create ONE coordinated package. The family should not have to navigate multiple assessments, multiple panels, and multiple systems. The Reg 16(4) coordinator pulls it all together. Where a child has an EHCP, CIN Plan, and ASSA simultaneously, the coordinator ensures coherent delivery across all frameworks.

## 12. Multi-Agency Duties

Section 10 of the Children Act 2004 imposes a duty on local authorities to promote co-operation between the authority and its relevant partners with a view to improving the well-being of children. Section 11 requires that functions are discharged having regard to the need to safeguard and promote the welfare of children.

Agency	Role in ASSA
Educational Psychologist	Cognitive assessment; learning profile; recommendations for educational provision
Speech and Language Therapist	Communication assessment; language disorder identification; therapy recommendations
Occupational Therapist	Sensory processing assessment; motor skills; daily living skills; equipment needs
CAMHS / Paediatric Psychology	Mental health assessment; trauma formulation; therapeutic recommendations
Paediatrician	Developmental assessment; FASD screening; neurodevelopmental conditions
Designated Teacher	Educational progress; attachment-aware strategies; Pupil Premium Plus usage
Virtual School Head	Strategic educational oversight; specialist provision where educational placement is at risk

### Escalation When Agencies Fail to Engage

Where notified agencies fail to engage or provide timely input, the Reg 16(4) coordinator should escalate through: (1) formal inter-agency dispute resolution, (2) senior

management channels, and (3) where necessary, safeguarding governance structures. All attempts to engage, and any failures to respond, should be documented.

## 13. Decision Making: Section 4(4)

Section 4(4) of the Adoption and Children Act 2002 states: 'Where, as a result of an assessment, a local authority decide that a person has needs for adoption support services, they must then decide whether to provide any such services to that person.'

The Decision IS	The Decision IS NOT
Whether to provide services	How much to provide
Based on assessed need	Based on budget
Subject to Regulation 18 (reasons required)	Arbitrary or unexplained
Constrained by statutory duties (CSDPA, Rixon, Islington)	A panel's budget allocation

### ● The Sufficiency Principle

Where an assessment identifies that particular services are necessary to meet needs, the authority must provide services sufficient in scope and intensity to meet those needs. Authorities may not lawfully substitute a lesser level of provision unless a fresh professional assessment demonstrates that the reduced provision is sufficient to meet the identified need. The correct question is not 'must the authority provide everything requested?' but 'must the authority provide enough to meet assessed need?' Where the answer is yes, provision must follow.

NOT a Lawful Reason for Refusal	Why It Is Unlawful
Budget constraints	Rixon: resources not lawful ground once necessity established under CSDPA
Panel decision based solely on budget	Panel cannot override assessed need on resource grounds alone
Need not established	Cannot contradict your own professional assessment
Not necessary	Cannot contradict your own assessment without a fresh individualised reassessment. Where an authority relies on eligibility standards those must be sufficiently transparent and capable of consistent application, and the individual decision must be supported by recorded reasoning.

Resource allocation	Budget by another name — Rixon and Islington both apply
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## 14. Regulation 17: The Family's Right

Regulation 17(1) states: 'Before making any decision under section 4(4) of the Act as to whether to provide adoption support services, the local authority must allow the person an opportunity to make representations in accordance with this regulation.'

Regulation 17 IS	Regulation 17 IS NOT
The family's right	The authority's right
The family's opportunity to identify additional needs	A mechanism for arbitrary reduction
A statutory procedural safeguard	A budget negotiation process
An opportunity for the family to request more appropriate provision	A cost-cutting mechanism

### Responding to Representations

Authorities should approach representations with an open mind focused on ensuring the final plan accurately reflects assessed needs and provides sufficient support. Representations may identify additional information, correct misunderstandings, or highlight needs not fully captured in the assessment. Any downward change following representations requires evidence-based reassessment of need, not panel pressure or budget negotiation. The family must be informed of the reasons for any changes.

## 15. Panels: What You Need to Know

The ASSR 2005 does not prescribe how local authorities should organise decision-making internally. Local authorities may use panels to support decision-making, quality assurance, and governance. The key question is not whether panels exist, but whether their decisions comply with statutory duties and whether they replace or predetermine the outcome of an individualised statutory assessment.

### Panel Authority — Properly Understood

Panels may exercise decision-making authority delegated by the local authority and may support the decision-making process. That authority includes the power to approve, question, seek clarification, or (with proper professional justification) amend proposed provision. However panels must not replace or predetermine the outcome of an individualised statutory assessment, disregard professional assessments without a fresh reassessment, or reduce provision on budget grounds alone where statute imposes a mandatory duty to meet assessed need.

Panel Role IS	Panel Role IS NOT
Quality assurance	Deciding quantum on budget grounds
Checking plan is complete	Reducing assessed hours without fresh assessment
Authorising provision	Overriding professional assessment
Compliance check	Budget gatekeeping

### ● Panel Amendment Requirements

Where a panel proposes to amend provision identified in an assessment, this must be based on a documented professional reassessment of need. Panels may not reduce provision solely through governance or resource allocation processes without revisiting the underlying assessment and recording professional reasons for concluding that a lower level of provision is sufficient to meet identified needs. A decision that simply says 'approved at reduced level' without professional justification is vulnerable to challenge.

### ⚠ Legal Risk Warning — For Managers and Panels

Failure to provide services sufficient to meet assessed needs may expose the authority to: (1) successful complaints findings of service failure, (2) LGSCO findings of maladministration with recommendations for financial remedy, (3) judicial review for breach of statutory duty or irrationality, and (4) damages under Human Rights Act 1998 where Article 8 rights are breached. The cost of defending such challenges, plus any remedy ordered, often exceeds the cost of providing the services in the first place.

## 16. The CSDPA 1970: The Double Lock

### 16.1 When CSDPA Applies

The Chronically Sick and Disabled Persons Act 1970 applies to disabled children. A child is disabled if they have:

- An EHCP (a significant proportion of adopted children have EHCPs)
- A diagnosed disability (ASD, ADHD, FASD, learning disability, etc.)
- A physical or mental impairment with substantial long-term effect

### 16.2 The Mandatory Duty

Section 2 of CSDPA 1970 states: 'Where a local authority... are satisfied that it is necessary in order to meet the needs of that person... it SHALL BE THE DUTY of that authority to make those arrangements.'

### ● No Discretion on Provision Once Necessity Established

Note the language: ‘SHALL BE THE DUTY.’ Once the authority is satisfied that services are necessary to meet the child’s needs, provision becomes mandatory. While Barry permits consideration of resources when determining necessity, once a service is assessed as necessary section 2 imposes a duty to provide it. Rixon confirms that resources cannot be used to avoid or dilute the duty once necessity is established. The duty is to the individual. It is not a target duty. This is directly confirmed by the DfE departmental advice on short breaks at paragraphs 4.15–4.16.

## 16.3 The Islington Principle: Assessment and Provision Must Be Kept Separate

R (JL) v Islington LBC [2009] EWHC 458 (Admin) established that:

- Once the CSDPA duty is established, eligibility criteria CANNOT be applied to limit provision
- Assessment and provision decisions must be kept as two distinct processes
- Criteria must not be applied before adequate assessment of need
- Criteria must never be applied mechanically
- Local authorities cannot avoid CSDPA duties by purporting to act under section 17 powers instead

This principle is cited directly by the DfE departmental advice on short breaks for carers of disabled children at paragraphs 4.15 and 4.16, and by Clements and Aiello, *Assessing the Needs of Disabled Children and their Families* (University of Leeds, July 2023) at paragraph 4.4, which states in terms: ‘Local authorities must not avoid their duties towards a disabled child under section 2 of the 1970 Act by purporting to act under their powers under section 17 of the 1989 Act.’

Clements and Aiello is a widely cited and well-regarded synthesis of the statutory framework, widely relied upon by practitioners in this field. Where an authority has expressly adopted or submitted Clements and Aiello as evidence of its own practice standards, it cannot simultaneously side-step CSDPA duties through section 17 powers without contradicting its own stated framework.

## 16.4 The Double Lock for Adopted Disabled Children

### ✓ The Double Lock Confirmed

For adopted disabled children, two separate frameworks may impose mandatory obligations simultaneously:

#### **Lock 1 — CSDPA section 2:**

Once necessity is established for a disabled child, the duty to provide is mandatory. While Barry permits consideration of resources at the necessity threshold, once necessity is established provision cannot be avoided or diluted by resource constraints (Rixon). Eligibility criteria cannot limit provision once the duty arises (Islington). Section 17

Children Act 1989 discretion cannot be used to side-step the CSDPA duty (Islington, DfE departmental advice paragraph 4.14).

**Lock 2 — Section 4(4) ACA 2002 discretion does not override mandatory CSDPA duties:**

Section 4(4) ACA 2002 confers discretion in relation to whether to provide adoption support services. However that discretion does not override mandatory duties arising under other statutory frameworks. Where CSDPA section 2 applies and necessity has been established, the mandatory duty under CSDPA is engaged independently of and alongside the section 4(4) decision. The section 4(4) discretion concerns adoption support services specifically; it cannot be used to avoid or reduce provision that is separately mandated by CSDPA section 2.

Both locks together mean that for an adopted disabled child whose necessity threshold has been crossed, there is no lawful route to refusing or reducing provision on resource or panel grounds alone without a fresh, reasoned, individualised reassessment demonstrating why lesser provision is sufficient to meet the assessed needs.

## 16.5 CSDPA Services Delivered Through the ASSA Plan

For adopted disabled children, CSDPA services should be delivered through the ASSA plan:

- ASSA identifies all needs including disability-related needs
- Plan specifies provision including CSDPA services where applicable
- Reg 16(4) coordinator monitors the implementation of the plan
- One integrated package rather than fragmented assessments across multiple teams

## 16.6 Recurring Compliance Risks

The following patterns represent recurring compliance risks that have been identified in practice. They are not assertions of bad faith. They describe structural features of how adoption support frameworks can fail to deliver what the law requires, sometimes through institutional inertia and sometimes through genuine misunderstanding of statutory obligations. Social workers and families should be able to recognise these patterns.

### **Compliance Risk: Section 17 Substitution**

An authority may accept that a child is disabled and needs support, but deliver that support under section 17 Children Act 1989 rather than CSDPA section 2. The effect is to convert a mandatory duty into a discretionary power. Islington and Clements paragraph 4.4 both establish that authorities cannot avoid CSDPA duties by purporting to act under section 17 powers instead. Where the assessed need falls within section 2(1)(a) to (h) CSDPA and necessity is established, the mandatory duty arises regardless of which statutory label the authority applies to its provision.

### **Compliance Risk: Insufficient Reassessment**

An authority may attempt to satisfy the individualised assessment requirement by commissioning a brief reassessment note to paper a reduction in provision decided on other grounds. A lawful reassessment must be genuinely individualised, based on fresh evidence, and produce recorded reasoning that demonstrates how the professional judgment was reached. A note that simply recites a lower figure without fresh evidence and individualised reasoning does not satisfy Barry's own requirements for a lawful necessity determination.

#### **⚠ Compliance Risk: Coordinator Role Insufficiently Discharged**

An authority may satisfy Regulation 16(4) formally by naming a coordinator while defining the role so narrowly that it has no practical effect. Regulation 16(4) requires a person to monitor the provision of adoption support services in accordance with the plan. The regulation does not prescribe the intensity or workload of the coordinator role in terms that are directly litigated. However, on a purposive interpretation of the statutory scheme — which is designed to ensure families receive coordinated support without having to case-manage it themselves — a coordinator who does not actively monitor whether services in the plan are being delivered and who does not chase gaps in provision is not fulfilling the function the regulation exists to serve. This is a teleological argument from statutory purpose rather than settled case law, but it is consistent with the scheme as a whole and the Explanatory Notes to the ACA 2002 which describe the framework as designed to facilitate a planned and co-ordinated support package.

#### **⚠ Compliance Risk: Procedural Rather Than Substantive Regulation 17 Compliance**

An authority may comply formally with Regulation 17 by sending a notice and acknowledging representations while substantively ignoring them. Regulation 17 requires the authority to allow the person an opportunity to make representations before making its decision. That is a substantive procedural safeguard not a formality. The authority must demonstrate that it genuinely considered the representations and must give reasons if it does not accept them. A response that says we have carefully considered your representations but remain satisfied is not lawful compliance if the representations raised new information or identified errors that were not addressed in the reasons.

#### **⚠ Compliance Risk: Urgency Provision as Substitute for Full Assessment**

An authority may use Regulation 21 to provide short-term crisis support and then allow that provision to lapse without completing the full ASSA process. Regulation 21 disapplies formal requirements in urgent cases in order to enable immediate provision. It does not disapply the underlying duty to complete a full assessment, prepare a plan, and provide services in accordance with that plan once the crisis has stabilised. Using Regulation 21 as a permanent substitute for the full statutory process is not lawful compliance with the framework.

#### **⚠ Compliance Risk: Enforcement Gap**

In the absence of automatic external merits review, some authorities may underweight compliance risk. Most families do not bring judicial review. Ombudsman remedies are retrospective. This structural reality does not make non-compliance lawful. Where an authority has failed to discharge mandatory statutory duties, the absence of automatic enforcement makes the integrity of the complaints process, the Ombudsman referral, and judicial review where necessary especially important as the mechanisms through which accountability is maintained.

## 17. Why There Is No Specialist Tribunal

Unlike EHCPs (which have SEND Tribunal), there is no specialist tribunal for adoption support decisions. This is not because the framework assumes local authorities will comply. It is because the complaints process, the Local Government and Social Care Ombudsman, and judicial review are the statutory mechanisms through which non-compliance is addressed. Understanding those mechanisms is therefore especially important for families who encounter failures in adoption support provision.

EHCP Framework	ASSA Framework
Assessment identifies need	Assessment identifies need
Plan specifies provision	Plan specifies provision
LA 'must secure' provision	CSDPA: 'shall be the duty'
If LA refuses → SENDIST appeal	If LA refuses or provides insufficiently → statutory complaints, Ombudsman, judicial review
Tribunal provides automatic external merits review	The absence of automatic external merits review makes the integrity of the complaints process and Ombudsman referral especially important

The statutory enforcement mechanisms are:

- Local authority statutory complaints procedure under the Children Act 1989 Representations Procedure (England) Regulations 2006 — a three-stage process with independent investigation at Stage 2 and a review panel at Stage 3
- Local Government and Social Care Ombudsman — can find maladministration, recommend financial remedy, and publish findings
- Judicial review — for unlawful decisions, irrationality, or breach of statutory duty
- Human Rights Act 1998 claims — where Article 8 or other Convention rights are engaged

### **i** Using the Complaints Process

The statutory complaints process is the primary vehicle for families challenging adoption support failures. Unlike judicial review it does not require legal representation. Unlike the Ombudsman it does not require completion of all three stages before referral in some

circumstances. The LGSCO has published guidance on what a good Stage 2 investigation looks like and will investigate whether the complaints process was properly conducted as well as the underlying service failure. Families should document everything, request an independent investigating officer and independent person at Stage 2, and preserve all rights to LGSCO referral in their correspondence.

## 18. The Presumption to Provide

Question	Analysis
Does the assessment identify need?	If yes → presumption to provide
Is the need 'necessary' to meet?	If yes → CSDPA duty triggered (mandatory) — Rixon
Has necessity threshold been crossed by any provision?	If yes → Barry's permission to consider resources at threshold stage does not extend to reducing provision below assessed need. Rixon and Islington operate alongside Barry at this stage. Provision must be sufficient to meet assessed need.
Is there a good reason not to provide?	Budget alone is NOT a good reason (Rixon). A panel decision without individualised assessment and recorded reasoning demonstrating why lesser provision is sufficient is NOT a good reason (Barry).
Is provision sufficient to meet assessed need?	Token provision does not discharge a mandatory duty (Islington sufficiency principle)
Therefore?	<b>PROVIDE SUFFICIENT SUPPORT TO MEET ASSESSED NEED</b>

## 19. Human Rights Considerations

Section 3 HRA 1998 requires that legislation be read and given effect compatibly with Convention rights. Section 6 makes it unlawful for a public authority to act incompatibly with Convention rights.

Article 8 ECHR provides that everyone has the right to respect for their private and family life. Interference is only permitted if it is in accordance with the law, necessary in a democratic society, and proportionate to the aim pursued.

### ● Article 8 Implications

Where an assessment identifies that a family needs support to remain together and function, and that support is refused, the decision should be reviewed against Article 8

proportionality. Article 8 analysis is fact-specific and courts apply a margin of appreciation in resource contexts.

The proportionality framework established in *Bank Mellat v HM Treasury (No.2)* [2013] UKSC 39 requires that: (1) the objective of the measure is sufficiently important to justify limiting a fundamental right; (2) the measure is rationally connected to the objective; (3) a less intrusive measure could not have been used without unacceptably compromising the objective; and (4) the importance of the objective justifies the severity of the interference. Applied to adoption support refusals, this means a refusal must pursue a legitimate aim, must be rationally connected to that aim, must be the minimum necessary interference, and must be proportionate in its impact on the family's Article 8 rights.

The stronger Article 8 argument in this context is procedural rather than substantive: a refusal that is not in accordance with the law because it violates the mandatory CSDPA duty, or that is not supported by adequate reasons as required by Regulation 18, or that failed to give the family a proper opportunity to make representations as required by Regulation 17, is procedurally disproportionate regardless of the substantive outcome. A decision that fails the in accordance with the law limb of the proportionality test does not reach the balancing exercise. Procedural Article 8 failures are less vulnerable to the proportionality margin than substantive ones and should be the primary basis of any Article 8 argument in adoption support disputes.

## 20. Reviews of Adoption Support Services

Regulations 19 and 20 establish requirements for reviewing adoption support services.

Review Trigger	Regulatory Basis
At least annually	Regulation 19(1)
At the request of the person receiving services	Regulation 19(2)(a)
If there is any significant change in circumstances	Regulation 19(2)(b)
Annual review of periodic financial support	Regulation 20(2)(a)
Any relevant change of circumstances	Regulation 20(2)(b)

### Varying or Terminating Services

If proposing to vary or terminate services following review: give notice of the proposed decision, allow time for representations, include a revised plan draft, consider representations before final decision, give notice of the decision with reasons. The same Regulation 17 and 18 requirements apply to review decisions as to initial decisions.

## 21. Urgent Cases (Regulation 21)

Regulation 21 provides: ‘Where any requirement applicable to the local authority under these Regulations in relation to carrying out an assessment, preparing a plan or giving notice would delay the provision of a service in a case of urgency, that requirement does not apply.’

In urgent cases, services may be provided without first completing the full assessment, plan, and notification process. The following criteria indicate urgency:

- Adoptive placement at imminent risk of disruption
- Child experiencing acute crisis (mental health, placement breakdown)
- Immediate respite needed to prevent family breakdown
- Safeguarding concerns requiring immediate support
- Hospitalisation or sudden disability of primary carer

### Documentation Requirement

Even when Regulation 21 disapplies formal requirements, practitioners must document: (a) the urgency criteria met, (b) the authorisation obtained, (c) the services provided, and (d) the plan for completing the full ASSA process once the immediate crisis has stabilised.

## 22. Step-by-Step ASSA Process

Step	Actions Required
Step 1: Receive Request	Acknowledge promptly. Confirm person is entitled under Reg 13. Check if child is disabled — CSDPA will also apply.
Step 2: Conduct Assessment (Reg 14)	Interview person and adoptive parents. Consider needs of whole family and other children. Consult Health and Education. Identify ALL needs. Document what is NECESSARY using mandatory language. Prepare written report.
Step 3: Prepare Plan (Reg 16)	Draft plan reflecting ALL assessed needs. Specify all services including health and education. Set objectives and timescales. NOMINATE COORDINATOR (Reg 16(4)) — MANDATORY.
Step 4: Notify Family (Reg 17)	Send notice of proposed decision. Include draft plan. Allow adequate time for representations. This is the FAMILY’S right.
Step 5: Consider Representations	Review all representations. Adjust plan UPWARD if additional needs identified. Do NOT use this stage to negotiate down. Document consideration of representations.

Step 6: Make Decision (S.4(4))	Decide WHETHER to provide services. If YES: produce final plan. If NO: must have lawful reason — budget alone is not lawful. Must consider Article 8. Must comply with Regulation 18.
Step 7: Notify Decision (Reg 18)	Send written notice of final decision. Must include REASONS. Include final plan. Include name of Reg 16(4) coordinator.
Step 8: Provide and Monitor	Deliver services per plan. Coordinator monitors ALL provision across all agencies. Review plan regularly (Reg 19). Family's role is to parent, not to case-manage.

## 23. Summary: Key Principles

Principle	Application
RAAs are not separate entities	You are exercising LA functions — LA duties apply
ASSA is not FHA	Use the correct statutory framework for adopted children. The ASSR framework is needs-led.
Two-stage analysis	Necessity threshold (stage one, Barry may apply) then needs (stage two, Rixon applies, budget irrelevant)
Rixon	Primary CSDPA authority: once necessity is established, provision cannot be avoided or diluted by resource constraints
Islington	Assessment and provision must be kept separate. Eligibility criteria cannot limit provision once CSDPA duty established.
Barry	Permits resource considerations at the necessity threshold. Where an authority relies on eligibility standards those must be sufficiently transparent and capable of consistent application with recorded reasoning. Cannot justify reducing provision below the level lawfully assessed as necessary without a fresh individualised reassessment.
CSDPA mandatory duty	'Shall be the duty' once necessity established. The double lock for adopted disabled children.
Reg 16(4) coordinator	MANDATORY — family should not case-manage their own services
Reg 17 is family's right	Not a budget negotiation. Family's opportunity to identify additional needs.

Reg 18 requires reasons	If refusing, must explain lawfully — budget alone is not lawful
Sufficiency	Token provision does not discharge a mandatory duty. Provision must be sufficient to meet assessed need.
Human rights	Article 8 — refusal may be vulnerable to challenge on proportionality grounds

### **The Bottom Line**

Your job is to assess need accurately and ensure that assessed need is met through an individualised, reasoned process. The framework set out in this document reflects a legally defensible interpretation of what the Adoption and Children Act 2002, the Adoption Support Services Regulations 2005, and the Chronically Sick and Disabled Persons Act 1970 require. Authorities acting outside this framework are at heightened legal risk. Every element — assessment, plan, coordinator, representations, decision — exists to ensure families get the support they need. That is the purpose. That is what the law requires.

## Appendix A: Quick Reference Card

Document	Key Sections
Adoption and Children Act 2002	S.3 (services), S.4 (assessment/plan)
ASSR 2005	Reg 13–21 (assessment to review)
CSDPA 1970	S.2 ('shall be the duty')
Children Act 1989	S.17 (children in need)
Children Act 2004	S.10 (co-operate), S.11 (safeguard)
Human Rights Act 1998	S.3 (interpretation), S.6 (public authorities)
ECHR	Article 8 (right to family life)
Rixon [1997] ELR 66	Primary CSDPA authority: budget irrelevant once necessity established
Islington [2009] EWHC 458	Assessment and provision separate: criteria cannot limit CSDPA provision
Tandy [1998] AC 714	Where statute imposes duty to meet assessed need, resources not lawful ground for refusal
Barry [1997] AC 584	Resources may inform necessity threshold. Where eligibility standards are used they must be sufficiently transparent and capable of consistent application. Cannot justify reducing provision below level lawfully assessed as necessary without fresh individualised reassessment.

### Key questions before finalising any ASSA:

- Am I using ASSA (not FHA) for this adopted child?
- Is this child disabled? (If yes, CSDPA applies — mandatory under Rixon)
- Have I identified ALL needs including CSDPA needs?
- Does my plan reflect ALL assessed needs?
- Have I used mandatory language (necessary, required, essential) throughout?
- Have I nominated a Reg 16(4) coordinator? (MANDATORY)
- Have I given the family their Reg 17 rights?
- If refusing anything, do I have a lawful reason (not budget)?
- Have I considered Article 8 implications?
- Is the provision SUFFICIENT to meet assessed need? (Islington sufficiency principle)
- Is the family being asked to case-manage? (They should not be)

## Appendix B: Full Statutory Text — ASSR 2005 Regulations 13-21

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The following is the full text of the key regulations. This is what the law actually says.

### Regulation 13 — Persons who may request an assessment

'(1) The local authority must carry out an assessment of the needs for adoption support services of — (a) any of the persons mentioned in section 3(1) of the Act at that person's request; and (b) any person mentioned in paragraph (2) at that person's request. (2) The persons are — (a) a child of an adoptive parent; (b) a child of a former partner of an adoptive parent; (c) any person who the local authority consider to have a significant and beneficial relationship with an adoptive child. (3) The local authority may carry out an assessment of any other person's needs for adoption support services.'

### Regulation 14 — Assessments

'(1) When carrying out an assessment, the local authority must have regard to — (a) the needs of the person being assessed and how these might be met; (b) where the assessment relates to an adoptive child, the needs of the adoptive family and how these might be met. (2) Where an assessment relates to an adoptive child, the local authority must also have regard to the needs of any other children in the family and how these might be met. (3) The local authority must — (a) interview the person whose needs are being assessed and, if that person is a child, the adoptive parents; (b) prepare a written report of the assessment. (4) If at any time during an assessment it appears to the local authority that the person being assessed may have needs for services which fall to be provided by — (a) an Integrated Care Board; or (b) a local education authority, the local authority must notify that body.'

### Regulation 15 — Financial support: assessment

'(1) Where, as a result of an assessment, the local authority are considering whether financial support should be provided, they must have regard to — (a) the financial circumstances of the adoptive parent or prospective adoptive parent; (b) the financial needs and resources of the adoptive child or child to be adopted; (c) any special needs of the adoptive child or child to be adopted; (d) the nature of the adoption support services to be provided.'

### Regulation 16 — Adoption support services: plan

'(1) Where the local authority decide to provide adoption support services, they must prepare a plan for the provision of those services. (2) The local authority must consult with the person whose needs have been assessed about the content of the plan. (3) The plan must set out — (a) the services to be provided; (b) the objectives of the plan and timescales for achieving them; (c) any arrangements to enable the objectives to be achieved; (d) the arrangements for review of the plan. (4) The local authority must nominate a person to monitor the provision of adoption support services in accordance with the plan.'

## Regulation 17 — Notice of proposal

‘(1) Before making any decision under section 4(4) of the Act as to whether to provide adoption support services, the local authority must allow the person an opportunity to make representations in accordance with this regulation. (2) The local authority must first give the person notice of the proposed decision and the time allowed for making representations. (3) The notice must contain — (a) a statement of the person’s needs for adoption support services; (b) whether the local authority propose to provide adoption support services; (c) if the local authority propose to provide adoption support services, details of the services proposed to be provided.’

## Regulation 18 — Notice of decision

‘(1) After making their decision under section 4(4) of the Act as to whether to provide adoption support services to a person, the local authority must give the person notice of that decision, including the reasons for it. (2) Where the local authority decide to provide adoption support services, the notice must also include — (a) details of the services to be provided; (b) details of any conditions attached to the provision of services; (c) the name of the person nominated to monitor the provision of services in accordance with the plan.’

## Regulation 19 — Review

‘(1) The local authority must review the provision of adoption support services at such times as they consider appropriate. (2) The local authority must carry out a review — (a) at the request of the person to whom adoption support services are being provided; (b) if there is any significant change in the circumstances of a person to whom adoption support services are being provided.’

## Regulation 21 — Urgent cases

‘Where any requirement applicable to the local authority under these Regulations in relation to carrying out an assessment, preparing a plan or giving notice would delay the provision of a service in a case of urgency, that requirement does not apply.’

## Appendix C: Key Case Law

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### **R v Islington London Borough Council ex parte Rixon [1997] ELR 66**

High Court. Sedley J emphasised that once a local authority is satisfied that services are necessary under section 2 CSDPA 1970, the duty to provide is mandatory. Once the authority is satisfied that services are necessary, resources cannot be used to avoid or dilute the duty to provide those services. This is a CSDPA case decided on CSDPA grounds and applies directly to disabled children's services.

Held: Resources are not a lawful consideration once necessity under CSDPA section 2 is established. The duty to provide is mandatory. This case is decided on CSDPA grounds and applies directly to disabled children's services.

### **R (JL and another) v Islington London Borough Council [2009] EWHC 458 (Admin)**

High Court. The leading authority on eligibility criteria and CSDPA duties. Cited directly by the DfE departmental advice on short breaks for carers of disabled children at paragraphs 4.15–4.16, and by Clements and Aiello, *Assessing the Needs of Disabled Children and their Families* (University of Leeds, July 2023) at paragraph 4.4.

Held: (1) Once the CSDPA duty is established, eligibility criteria cannot be applied to limit provision. (2) Assessment and provision decisions must be kept as two distinct processes. (3) Criteria must not be applied before adequate assessment of need. (4) Criteria must never be applied mechanistically. (5) Local authorities cannot avoid CSDPA duties by purporting to act under section 17 Children Act 1989 powers instead.

Clements and Aiello at paragraph 4.4 states in terms: 'Local authorities must not avoid their duties towards a disabled child under section 2 of the 1970 Act by purporting to act under their powers under section 17 of the 1989 Act.' This is the professional guidance equivalent of the Islington holding and reinforces it in the practice context.

### **R v East Sussex County Council ex parte Tandy [1998] AC 714**

House of Lords. Established that where statute imposes a duty to meet assessed need, the local authority cannot refuse on grounds of resources alone. The assessed need must be met. The duty is to the individual, not a target duty subject to resources.

Note: Tandy concerned education law under the Education Act 1993. Rixon and Islington are the primary CSDPA authorities. Tandy's general principle is consistent with both and is applied in the ASSA context as supporting authority.

### **R (Barry) v Gloucestershire County Council [1997] AC 584**

House of Lords. Established that resources may be taken into account when the local authority is determining whether services are necessary at the threshold stage under CSDPA section 2. Where an authority relies on eligibility standards or criteria that reflect resource considerations, those must be sufficiently transparent and capable of consistent application, and the individual decision must be supported by recorded reasoning that

demonstrates how the standard was applied to that person's specific circumstances. Barry's principles have been applied more broadly than adult social care.

Barry permits resources to be taken into account when determining whether services are necessary. It does not authorise reducing provision below the level lawfully assessed as necessary unless that assessment is revisited through a fresh, reasoned, individualised reassessment. Read alongside subsequent case law: (1) Barry permits resource considerations at the necessity threshold. Rixon and Islington establish that once necessity is determined and the duty arises, provision cannot be restricted by resource constraints or eligibility criteria alone. (2) Where an authority relies on eligibility standards when determining necessity, those standards must be sufficiently transparent and capable of consistent application, and the individual decision must be supported by recorded reasoning. A panel decision without individualised assessment and recorded reasoning does not satisfy these requirements. (3) Where an authority has provided services to a disabled child on the basis that they are necessary, that is strong evidence the necessity threshold has been crossed in relation to those assessed needs. Barry's permission to consider resources at the threshold does not extend to reducing provision below the level the authority has assessed as necessary without a fresh individualised reassessment. (4) Barry does not authorise conflating assessment of need with decisions about provision — Islington requires these to be kept as two distinct processes.

## Appendix D: Practitioner Compliance Checklist

Complete this checklist before finalising any ASSA. Keep on file.

### Assessment (Regulations 13-15)

Requirement	Completed?
Person entitled to assessment under Reg 13 confirmed	<input type="checkbox"/>
Interview with person being assessed completed	<input type="checkbox"/>
Interview with adoptive parents (if child) completed	<input type="checkbox"/>
Needs of whole adoptive family considered	<input type="checkbox"/>
Needs of other children in family considered (Reg 14(2))	<input type="checkbox"/>
Health needs identified — ICB notified if applicable (Reg 14(4))	<input type="checkbox"/>
Education needs identified — LEA notified if applicable (Reg 14(4))	<input type="checkbox"/>
Financial support assessment completed if applicable (Reg 15)	<input type="checkbox"/>
CSDPA eligibility considered — is child disabled?	<input type="checkbox"/>
Written assessment report prepared (Reg 14(3)(b))	<input type="checkbox"/>
Necessary language used throughout (necessary/required/essential not would be helpful)	<input type="checkbox"/>

### Plan (Regulation 16)

Requirement	Completed?
Plan prepared specifying all services to be provided (Reg 16(3)(a))	<input type="checkbox"/>
Plan objectives clearly stated (Reg 16(3)(b))	<input type="checkbox"/>
Timescales for achieving objectives specified (Reg 16(3)(b))	<input type="checkbox"/>

Review arrangements specified in plan (Reg 16(3)(d))	<input type="checkbox"/>
COORDINATOR NOMINATED (Reg 16(4)) — MANDATORY	<input type="checkbox"/>
Person assessed consulted about plan content (Reg 16(2))	<input type="checkbox"/>

## Notice and Representations (Regulation 17)

Requirement	Completed?
Notice of proposed decision sent to family (Reg 17(2))	<input type="checkbox"/>
Notice includes statement of person's needs (Reg 17(3)(a))	<input type="checkbox"/>
Notice states whether services are proposed (Reg 17(3)(b))	<input type="checkbox"/>
Time allowed for representations specified (Reg 17(2))	<input type="checkbox"/>
Representations received considered before final decision	<input type="checkbox"/>

## Decision and Notification (Regulation 18)

Requirement	Completed?
Final decision made on whether to provide services (S.4(4))	<input type="checkbox"/>
Written notice of final decision sent to family (Reg 18(1))	<input type="checkbox"/>
Notice includes REASONS for decision	<input type="checkbox"/>
If refusing: reason is lawful (not budget alone, not panel decision without criteria)	<input type="checkbox"/>
Notice includes name of Reg 16(4) coordinator	<input type="checkbox"/>
If CSDPA applies: provision documented as mandatory (Rixon)	<input type="checkbox"/>
Article 8 implications considered if refusing any provision	<input type="checkbox"/>

## Appendix E: A Guide for Adoptive Families

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This appendix explains what you are entitled to and how to request it.

### Your Right to an Assessment

You have a legal right to request an assessment of your adoption support needs under section 4 of the Adoption and Children Act 2002. This right belongs to you as an adoptive parent. It does not depend on a referral from a social worker, a professional recommendation, or a particular level of difficulty. You can exercise it at any time by writing to your Director of Children's Services and requesting a statutory assessment under section 4 of the Adoption and Children Act 2002 and the Adoption Support Services Regulations 2005.

### What You Are Entitled To Receive

Following a section 4 request, you are entitled to:

- A needs-led assessment conducted in accordance with Regulations 13 to 15 of the ASSR 2005
- A written adoption support plan under Regulation 16 setting out all services to be provided
- A named coordinator under Regulation 16(4) to monitor that services are being delivered
- Notice of the proposed decision with a draft plan and time to make representations under Regulation 17
- Written notice of the final decision with reasons under Regulation 18
- A review of your plan at least annually or whenever your circumstances change significantly

### If Your Child Is Disabled

If your child has a disability, the Chronically Sick and Disabled Persons Act 1970 section 2 also applies. The disability threshold for CSDPA purposes operates through section 17(11) of the Children Act 1989, which is broadly interpreted by courts to include children with significant physical or mental impairments including ADHD, ASD, FASD, learning disabilities, and similar conditions. In practice, a child with an EHCP or a diagnosed disability is very likely to meet this threshold. This is a different definition from the Equality Act 2010 section 6 definition, which requires an impairment to have a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities. Most adopted children with diagnosed neurodevelopmental conditions or complex trauma histories will meet both definitions. If in doubt, ask the local authority to confirm in writing whether your child is considered disabled for CSDPA purposes.

Under the CSDPA, once the local authority is satisfied that it is necessary to provide services to meet your child's needs, it shall be the duty of the authority to do so. The local authority may take resources into account when deciding whether services are necessary. However, once necessity has been established, the duty to provide is mandatory and the provision offered must be sufficient, on a lawful and reasoned basis, to meet the needs the

authority has assessed as necessary to meet. Budget alone cannot justify refusing or reducing provision that the authority has assessed as necessary (Rixon [1997]).

## If You Are Dissatisfied

If your assessment has not been conducted properly, if no plan has been produced, if you have not been given your Regulation 17 rights, or if provision is insufficient to meet your child's assessed needs, you have the right to complain under the statutory complaints procedure. You may also refer unresolved complaints to the Local Government and Social Care Ombudsman.

### Remember

You are not asking for a favour. You are exercising a statutory right. The framework exists to help adoptions succeed. Your job is to parent. The local authority's job is to assess your needs and ensure that assessed needs are met.