

# Disability rights in the UK

UK Independent Mechanism  
Submission to inform the CRPD  
List of Issues on the UK

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# Introduction

This submission has been produced by the United Kingdom Independent Mechanism (UKIM). In 2009 the UK Government designated the Equality and Human Rights Commission (EHRC), the Equality Commission for Northern Ireland (ECNI), the Northern Ireland Human Rights Commission (NIHRC) and the Scottish Human Rights Commission (SHRC) as the UK's Independent Mechanism under CRPD Article 33, tasked with promoting, protecting and monitoring implementation of the CRPD.

Since the UK ratified the CRPD in 2009, UKIM has taken active steps to involve disabled people and their representative organisations as part of fulfilling its monitoring role and encouraged their full participation in the monitoring process. The individual independent mechanisms have used a range of activities to involve disabled people across the UK. For example, we have produced guidance and other resources and held engagement and capacity-building events, roundtable discussions and web-based seminars to ask disabled people to identify their priority issues. We have also provided financial support to disabled people's organisations to allow them to participate directly in the CRPD reporting process.

## UK constitutional arrangements

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The United Kingdom of Great Britain and Northern Ireland (UK) includes four countries – England, Scotland, Wales and Northern Ireland. The UK Parliament has devolved various powers to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. The UK Parliament maintains responsibility for policy matters that have not been devolved ('reserved' matters) and for England. Therefore, responsibility for implementing the CRPD lies with the UK and devolved governments.

In addition, there are three separate legal systems in the UK – England and Wales, Scotland and Northern Ireland. The Supreme Court is the UK's highest court of law. It is the final court of appeal for all UK civil cases. It also decides 'devolution issues' about whether

the devolved authorities in Scotland, Wales and Northern Ireland have acted or propose to act within their powers.<sup>1</sup>

## How to read this document

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This submission follows on from the UKIM interim report<sup>2</sup> published in 2014 and provides up to date information about disabled people's rights in the UK. As the independent mechanism for the UK, we have identified issues under 14 themes and suggested information the Committee might want to request from the UK and devolved governments.

This main report identifies problems affecting disabled people across the UK, Great Britain (GB), or in one or two UK countries that we consider to be especially pressing, and which we recommend the CRPD Committee considers in its preparation of the List of Issues for the UK. Our suggested questions indicate whether it is UK, devolved governments or both that have responsibility for implementing measures to address these problems. We have also indicated the CRPD articles relevant to the issues raised within each sub-heading.

In addition to this main report, the constituent members of UKIM have prepared supplementary country reports relating to England, Wales, Scotland and Northern Ireland. These provide further details and additional suggested questions about problems affecting disabled people in each country, over which the relevant devolved administration (or the UK Government in relation to England) has jurisdiction. We recommend the Committee reviews these supplementary reports alongside this main submission.

In our view, the UK and devolved governments have not taken all the appropriate steps to progress the implementation of the Convention. Therefore, we have also included an annex with our recommendations of the measures the UK and/or the devolved governments should take to promote and protect the rights of disabled people. We will review these recommendations ahead of the Committee's public examination of the UK, taking into account the views of disabled people and information provided by the UK Government in response to the List of Issues.

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<sup>1</sup> Supreme Court and the United Kingdom's legal system available [here](#) [accessed: 9 December 2016].

<sup>2</sup> UKIM (2014) Monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities, available [here](#) [accessed 16 August 2016].

# Executive summary

## Enhancing the status of CRPD in domestic law (Articles 3, 4)

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CRPD is not directly incorporated into domestic law. UKIM does not consider that the UK and devolved governments consistently give CRPD due consideration, and there are currently no domestic mechanisms to hold them to account for failing to do so.

The proposal to introduce a Bill of Rights to replace the Human Rights Act (1998) and the UK's planned withdrawal from the EU pose potential risks for protecting disabled people's CRPD rights.

## Equality and non-discrimination (Article 5)

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The Equality Act 2010 (EA 2010) provides protection from various forms of disability discrimination in areas such as work, the provision of goods and services, education and premises. The EA 2010 does not apply in Northern Ireland, where disability equality legislation provides a lower level of protection for disability rights and needs to be reformed.

Some of the EA 2010 provisions that would strengthen the rights of disabled people are yet to be commenced or have been repealed, and there are a number of gaps in protection which should be addressed to ensure compliance with the CRPD.

## Awareness-raising (Article 8)

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Prejudice and negative attitudes towards disabled people continue, including negative attitudes towards disabled people claiming social security benefits. Further measures are needed to raise awareness and combat negative attitudes in order to meet CRPD requirements.

## **Accessibility (Articles 9, 21)**

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Despite some improvements, disabled people continue to face difficulties in accessing appropriate housing, the built environment, public transport, services and information. Further measures are needed to ensure the UK complies fully with its CRPD obligations.

## **Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28)**

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Disabled people are more likely to live in poverty than people who are not disabled, and social security reforms have had a particularly disproportionate, cumulative impact on the rights to independent living and an adequate standard of living for disabled people.

UKIM welcomes the publication of the Committee's report of their inquiry into the UK under Article 6 of the CRPD Optional Protocol. We have urged the UK Government to reconsider its response to the inquiry, which suggested that it will not act on the recommendations.

## **Employment (Article 27)**

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Disabled people continue to be less likely to be in employment than non-disabled people. Although a goal has been set to halve the disability employment gap across the UK there has been little progress. Further efforts are required to ensure that all appropriate measures are in place to support disabled people's right to work on an equal basis with others.

## **Access to justice (Articles 13, 12)**

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Changes to legal aid in England and Wales have negatively affected disabled people's access to justice in family law, housing, employment, debt and welfare benefits cases. The introduction of fees for Employment Tribunals in GB has resulted in a significant decline in the number of disability discrimination claims. To comply with CRPD, the UK Government must take concrete steps to ensure that disabled people can effectively seek redress.

## **Education (Articles 24, 7)**

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The UK has retained an interpretative declaration and reservation to Article 24 on inclusive education, and evidence suggests slight regression on this issue.



Disabled pupils are performing worse than non-disabled pupils at school, are significantly more likely to be excluded, and face barriers to transitioning from school to further education or employment.

A renewed commitment to inclusive education is needed, and steps should be taken to ensure disabled pupils have equal access to quality education.

## **Health and life (Articles 25, 10)**

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Disabled people are more likely to experience health inequalities and major health problems and are likely to die younger than other people.

Mental health services are underfunded. People with mental health conditions often experience protracted waits for treatment and have unmet needs. Many people with learning disabilities or autism are placed in psychiatric hospitals inappropriately and for long time periods.

There is evidence of 'Do Not Resuscitate' orders being applied inappropriately to disabled people by medical professionals.

All appropriate measures should be put in place to address barriers to disabled people's rights to life and to the highest attainable standard of health.

## **Freedom from exploitation, violence and abuse (Articles 16, 6)**

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Disability hate crime is under-reported.

Disabled women experience disproportionate levels of domestic violence and face barriers to accessing appropriate support. The UK has not ratified the Istanbul Convention.

Disabled pupils are more likely to have reported being bullied at school.

Further action is needed to ensure that disabled people are free from violence and abuse.

## **Autonomy and integrity, including restraint (Articles 12, 14, 15, 17)**

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There are concerns about the physical and chemical restraint of disabled people in state detention and in healthcare settings, and evidence of abuse and neglect of older people and people with learning disabilities in residential and care settings.

The UN Committee Against Torture has urged the UK to stop detaining asylum seekers with mental health conditions, except as a last resort.

Mental capacity laws in the three UK jurisdictions, whilst providing for supported decision-making, are based around the substitute decision-making model which allows decisions to be made on a person's behalf. The Essex Autonomy Project has made recommendations to reform legislation to achieve compliance with the CRPD.

There is a lack of effective safeguards to prevent the deprivation of liberty of people in hospitals or other care settings who are deemed incapable of consent but are compliant with their admission and/or treatment.

All appropriate measures should be put in place to protect the autonomy and integrity of disabled people in compliance with the CRPD.

### **Participation in political and public life (Article 29)**

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Disabled people continue to encounter barriers to exercising their right to vote.

Disabled people are under-represented in political office and public appointments and face continued challenges to equal representation.

Concrete steps should be taken to remove barriers to disabled people's participation in political and public life.

### **Statistics and data collection (Article 31)**

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There are significant gaps in the collection of disability statistics and limited availability of disaggregated data. These gaps should be addressed to ensure effective monitoring, in compliance with CRPD requirements.

### **National implementation and monitoring (Article 33)**

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Since the establishment of the UK Independent Mechanism (UKIM), no additional funding has been allocated to enable UKIM to carry out its responsibilities under the CRPD. The UK Government should ensure the mechanism is sufficiently resourced to perform its functions.

# Disability rights in the UK: UK Independent Mechanism Submission to inform the CRPD List of Issues on the UK

## Enhancing the status of CRPD in domestic law (Articles 3, 4)

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### CRPD in domestic law and policy

The UK and devolved governments have not directly incorporated CRPD into domestic law.<sup>3</sup> Instead, a number of CRPD rights are given at least partial effect through the Equality Act 2010,<sup>4</sup> the Human Rights Act 1998,<sup>5</sup> and a mixture of legislation, policies and programmes.<sup>6</sup>

The UK Government has stated that this approach is sufficient to ensure compliance,<sup>7</sup> and that ‘...policies that might affect disabled people are considered in the light of Convention obligations.’<sup>8</sup> However, there is currently no explicit requirement<sup>9</sup> for Ministers to give ‘due

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<sup>3</sup> As the UK is a dualist legal system, international law does not have direct enforceability domestically unless it is incorporated into domestic law. However, the domestic courts have accepted that the CRPD can be used as an aid to interpretation of relevant domestic laws in an increasing number of cases. See: *Burnip v Birmingham City Council & Anor (Rev 1)* [2012] EWCA Civ 629, available [here](#); *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, available [here](#); *P v Cheshire West and Chester Council and another*; *P and Q v Surrey County Council* [2014] UKSC 19, available [here](#) [accessed: 10 November 2016]. Supranational human rights and equality law (the ECHR and EU law) which is incorporated into UK law has also been interpreted taking account of the rights contained in the CRPD.

<sup>4</sup> The EA 2010 provides a legislative framework to tackle discrimination and advance equality across Great Britain, and places an equality duty (the Public Sector Equality Duty) on public authorities.

<sup>5</sup> The HRA 1998 incorporates the European Convention on Human Rights into UK law and applies to the whole of the UK.

<sup>6</sup> E.g. Access to Work scheme (GB), Rail Vehicle Accessibility Regulations 2010 (GB), the Care Act 2014 (England) and the UK cross-government disability strategy: Fulfilling Potential.

<sup>7</sup> JCHR, Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee’s Twenty-third Report of Session 2010-12 see [here](#) [accessed: 6 September 2016].

<sup>8</sup> Office for Disability Issues (2011) UK Initial Report: On the UN Convention on the Rights of Persons with Disabilities, paras 44-49. Available [here](#) [accessed: 1 August 2016].

<sup>9</sup> Neither a statutory requirement nor a non-statutory commitment. However, note that case law has established there is a need to be aware of CRPD in executive decision-making processes. See *R (on the Application of Bracking and Others) v Secretary of State for Work and Pensions* [2013] EWHC 897 (Admin); *Bracking and others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345; *R (on the application of Aspinall, Pepper and others) v Secretary of State for Work and Pensions* [2014] EWHC 4134 (Admin).

regard' to CRPD when developing new policy and law.<sup>10</sup> UKIM does not consider that UK and devolved governments consistently give CRPD due consideration, and there are currently no domestic mechanisms to hold them to account for failing to do so.<sup>11</sup>

Scotland's First Minister has welcomed exploration of 'implementing and incorporating into Scots law some key international human rights treaties'. However, to date no concrete steps have been taken.<sup>12</sup>

The Social Services and Well-being (Wales) Act's Code of Practice makes reference to the UNCRPD.<sup>13</sup> However, the Welsh Government has not put consideration of UNCRPD onto a statutory footing in the same way as the UNCRC.<sup>14</sup>

It is unclear how far disabled people are engaged in relevant law and policy formulation and implementation across the UK.<sup>15</sup>

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<sup>10</sup> Approaches that have enhanced the status of the Convention of the Rights of the Child (CRC) in domestic law include UK Government non-binding guidelines to give due consideration to the CRC when developing new policy or legislation. There are mixed results from this non-statutory approach. More effective mechanisms for incorporating the CRC include statutory instruments in Wales and Scotland, which place duties on Ministers to consider the CRC in law- and policy-formulation. Early evidence suggests that these have made concrete differences to how legislation and policy is developed: EHRC (October 2016) Children and Social Work Bill: Briefing in support of amendments, available [here](#) [accessed: 9 December 2016].

<sup>11</sup> E.g. the EHRC raised concerns the UK Government's analyses of the impact of social security reforms lacked full consideration of CRPD obligations. See: EHRC letter to the DWP [here](#), and EHRC, response to call for written evidence [here](#) [accessed: 3 June 2016].

<sup>12</sup> First Minister's speech, SNAP Human Rights Innovation Forum, 9 December 2015, available [here](#) [accessed: 12 December 2016].

<sup>13</sup> Welsh Government (2015), Code of practice in relation to measuring social services performance: Issued under section 145 of the Social Services and Well-being (Wales) Act 2014, p. 9, available [here](#) [accessed: 20 December 2016]. The Code of Practice states that, in exercising their social services functions, local authorities must ensure that their decisions have regard to a person's individual circumstances and the UNCRPD. See the Wales supplementary report for further details, and recommendations for further strengthening consideration of CRPD.

<sup>14</sup> In general, see the Rights of Children and Young Persons (Wales) Measure 2011 available [here](#), Welsh Government, Children's Rights Scheme 2014 [here](#). For more information on the Social Services and Well-being (Wales) Act 2016 in particular, see the supplementary report for Wales.

<sup>15</sup> The UK Government's Initial Report refers to a number of involvement forums such as 'Equality 2025' and the 'Network of Networks', which no longer exist. While the Fulfilling Potential Forum (see [here](#)) remains active, it is not clear whether it provides for adequate engagement of disabled people across the UK in CRPD-relevant law and policy development and implementation.

**We recommend that the CRPD Committee asks:**

- 1. Will the UK and devolved governments take further steps to incorporate CRPD rights into domestic law?**
- 2. How do the UK and devolved governments demonstrate that they consistently give due consideration to CRPD in developing law and policy, e.g. the Welfare Reform and Work Act 2016?**
- 3. What domestic remedies are available for people who claim their CRPD rights have been breached?**
- 4. Where the UK and devolved governments have delegated responsibilities to the local level (e.g. social care), how do they ensure compliance with CRPD?**
- 5. How do the UK and devolved governments involve disabled adults and children in developing and implementing law and policy?**

### **Human Rights Act<sup>16</sup>**

The UK Government has committed<sup>17</sup> to bringing forward proposals on a Bill of Rights to replace the HRA. The Scottish Parliament<sup>18</sup> and Welsh Government<sup>19</sup> have voiced opposition to this proposal. UKIM considers the HRA provides essential protection to everyone in the UK, and changing it would have significant constitutional and social consequences. It should only be considered as part of a broad and participative public process that advances human rights protections.

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<sup>16</sup> In the UK human rights are protected by both the Human Rights Act 1998 and by the devolution statutes (Scotland Act 1998, Government of Wales Act 2006, Northern Ireland Act 1998). In Scotland, human rights are devolved to the Scottish Parliament.

<sup>17</sup> In February 2016, then Prime Minister David Cameron indicated that the UK Government would shortly develop proposals 'to change Britain's position with respect to the European Court of Human Rights by having our own British Bill of Rights', see [here](#). On 24 January 2017, it was confirmed that further work on proposals for a British Bill of Rights would be delayed until after arrangements for the UK's exit from the EU are in place, see here [accessed: 30 January 2017].

<sup>18</sup> Motion passed by the Scottish Parliament, 11 November 2014; statement by the Cabinet Secretary for Social Justice, Communities and Pensioners' Rights, Alex Neill MSP, 15 May 2015.

<sup>19</sup> Wales Online (18 May 2015) Welsh Government will do 'everything it can' to block repeal of the Human Rights Act (news article), available [here](#) [accessed: 6 September 2016].

**We recommend that the CRPD Committee asks:**

**6. In light of proposals to bring forward a British Bill of Rights, could the UK and devolved governments explain how they will ensure there is no regression in the protection of CRPD rights?**

**Brexit**

The UK's planned withdrawal from the European Union (EU) poses potential risks for protecting disabled people's rights, and UKIM considers that there should be no regression from current disability rights protections that have emanated from the EU.<sup>20</sup> Brexit may mean future equality and human rights protections from the EU are not binding in UK law and could no longer be relied on in UK courts,<sup>21</sup> and the Charter of Fundamental Rights may no longer have effect in domestic law.<sup>22</sup>

Procurement<sup>23</sup> and transport<sup>24</sup> are areas in which there are particular benefits of international standardisation in order to provide effective protections for disabled people's rights.

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<sup>20</sup> A number of EU directives and regulations have led to improved protection for disabled people. These include ensuring that employment protection standards apply to all employers; requiring assistance to be provided for disabled people when travelling by air, sea, and coach; and requiring the packaging of medicinal products in Braille.

<sup>21</sup> E.g. the EU proposal for a European Accessibility Act to make products and services more accessible to disabled people.

<sup>22</sup> Written Evidence from the EHRC to the JCHR inquiry into the human rights implications of Brexit, available [here](#) [accessed: 9 December 2016].

<sup>23</sup> Three Public Procurement Directives set out the EU legal framework for procurement by public authorities, and they all refer to the need to take accessibility for persons with disabilities into due account: Directive 2014/24/EU on public procurement; Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors; Directive 2014/23/EU on the award of concession contracts.

<sup>24</sup> There are EU Regulations concerning the rights of disabled people when travelling by bus and coach, rail, air, and sea and inland waterway. These are: Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport; Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations; Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air; Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway. In addition, there is a legal framework for the accessibility of rail vehicles and infrastructure: The Consolidated Railways Interoperability Directive 2008/57/EC requires many aspects of the European rail network to be addressed by means of Technical Specifications for Interoperability (TSI). The relevant TSI is the Technical Specification for Interoperability for Persons with Reduced Mobility, implemented by Regulation (EU) 1300/2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility.

**We recommend that the CRPD Committee asks:**

**7. How is the UK Government ensuring that there is no regression on the current protections for disabled people's rights as a result of Brexit?**

**Action plan**

While action plans on some aspects of disabled people's rights have been established,<sup>25</sup> concerns remain, including:

- The geographical scope of the UK Government's 2013/14 'Fulfilling Potential' strategy and action plan is unclear,<sup>26</sup> and plans for updating it are yet to be announced.<sup>27</sup>
- The development of the Scottish Government's Disability Delivery Plan does not appear to have included an analysis of where Scotland falls short of CRPD requirements and where progress is needed.<sup>28</sup>
- Further emphasis on implementation is needed to ensure the Welsh Government's Framework for Action on Independent Living<sup>29</sup> advances disabled people's rights.
- The Northern Ireland Executive's stated commitment to establish an oversight group for involving disabled people's representative organisations on its Disability Strategy has not been realised, and the current strategy will soon be out of date.<sup>30</sup>
- The UK and devolved governments have not yet confirmed<sup>31</sup> how they will implement the 2016 Concluding Observations of the Committee on the Rights of the Child<sup>32</sup> and the Committee on Economic, Social and Cultural Rights as they relate to disabled people.<sup>33</sup>

<sup>25</sup> In addition to those action plans noted below, the Welsh Government has published a Framework for Action on Independent Living, which sets out how it will fulfil some CRPD obligations. See: Welsh Government (2013), Framework for Action on Independent Living, available [here](#) [accessed: 20 December 2016]. It has also published Equality Objectives for 2016–2020 that identify a number of actions to tackle inequalities experienced by disabled people in Wales. See Welsh Government (August 2016), Equality Objectives 2016–2020, available [here](#) [accessed: 13 October 2016].

<sup>26</sup> The UK Government's 2013/14 disability strategy and action plan, 'Fulfilling Potential: making it happen', available [here](#) [accessed: 12 October 2016]. One stated aim of the strategy is to give effect to some CRPD requirements. Some policies it refers to are applicable across the whole of the UK, but many apply to England only. The 2014 action plan states: 'Fulfilling Potential – Making It Happen, and this report, refer to a wide variety of policies, some applicable across the whole of the UK and many specific to England only.' See UK Government (September 2014) Fulfilling Potential: Making It Happen – Action Plan Updated, p. 1, available [here](#) [accessed: 12 October 2016].

<sup>27</sup> UKIM understand that the strategy is due to be updated over the coming year. It remains to be seen how explicitly the new strategy will address the requirements of the CRPD, and concrete plans about updating the strategy are yet to be announced.

<sup>28</sup> Scottish Government (2016) A Fairer Scotland for Disabled People – Our Delivery Plan to 2021 for the UNCRPD available [here](#) [accessed: 12 January 2017].

<sup>29</sup> Welsh Government (2013) Framework for Action on Independent Living, available [here](#) [accessed: 20 December 2016].

<sup>30</sup> Northern Ireland Executive (2013) 'A Strategy to improve the lives of people with disabilities 2012-2015' Annual Report, p. 28, available [here](#) [accessed: 6 September 2016]. Responsibility for the Disability Strategy was transferred to the newly formed Department for Communities in 2016.

**We recommend that the CRPD Committee asks:**

**8. How do the UK and devolved governments:**

- **ensure systematic implementation of the CRPD across all relevant policy areas and all parts of the UK?**
- **intend to implement the 2016 Concluding Observations of the Committee on Economic, Social and Cultural Rights and Committee on the Rights of the Child relating to the rights of disabled people?**

## **Equality and non-discrimination (Article 5)**

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### **Gaps in equality legislation**

Disability equality legislation in GB has been harmonised and strengthened by the implementation of the Equality Act 2010.<sup>34</sup> The Disability Discrimination Act 1995 still applies in Northern Ireland, providing a lower level of protection for disabled people in Northern Ireland than is available in GB.<sup>35</sup>

However, some provisions of the Equality Act 2010 that would strengthen protection for disabled people are yet to be commenced or have been repealed,<sup>36</sup> and there are a number of gaps in protection.<sup>37</sup>

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<sup>31</sup> E.g. in September 2016 the EHRC wrote to the Minister for Children and Families, Edward Timpson MP, setting out our key priorities from the recent CRC Concluding Observations. The response received to date fails to address specific concerns raised in the Concluding Observations. More information is available [here](#).

<sup>32</sup> Committee on the Rights of the Child (July 2016) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, available [here](#) [accessed: 14 September 2016].

<sup>33</sup> Committee on Economic, Social and Cultural Rights (July 2016) Concluding Observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, available [here](#) [accessed: 14 September 2016].

<sup>34</sup> The Equality Act 2010 brings together equality legislation across a range of equality grounds which forms the basis of anti-discrimination law in GB. The Act simplifies, harmonises and strengthens equality legislation in GB and provides a range of additional protections for disabled people, available [here](#) [accessed: 5 August 2016]. Under s.217, with limited exceptions, the Act does not apply to Northern Ireland. For more information, see [here](#) [accessed: 5 August 2016].

<sup>35</sup> Gaps in Northern Ireland include remedies against perceived and associative discrimination and indirect discrimination. ECNI (2012) Strengthening Protection for Disabled People: Proposals for Reform, available [here](#) [accessed: 5 August 2016].

<sup>36</sup> The full list of provisions in the Equality Act 2010 that have not yet been commenced or have been repealed are: the socio-economic duty – sections 1 to 3; caste discrimination – regulations under section 9 (5); dual discrimination – section 14; ships and hovercraft – regulations under section 30; reasonable adjustments to common parts of rented residential properties – section 36 (1)(d), (5)-(6)(b) and Schedule 4 paras 5-7, para. 8 insofar as it relates to a disabled person who is entitled to occupy premises other than as a tenant or a unit-holder (England and Wales only); taxi transport accessibility – sections 160, 161 other than for the power to make regulations, 162-164, 165 other than for the purpose of the issue of exemption certificates under section 166 (Chapters 1 of Part 12); the requirement for political parties to report on diversity of candidates – section



**We recommend that the CRPD Committee asks:**

- 9. How will the Northern Ireland Executive address legislative gaps in protection, including gaps that exist between disability equality law in Northern Ireland and GB, so as to guarantee disabled people effective legal protection against discrimination?**
- 10. When does the UK Government, and where relevant the Scottish Government, intend to bring into force all the provisions of the Equality Act 2010, and reinstate provisions that have been repealed?**
- 11. How does the UK Government intend to address legislative gaps in protection from discrimination?**

## **Awareness-raising (Article 8)**

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### **Prejudice and negative attitudes**

While there are commitments and some measures across the UK to reduce prejudice and negative attitudes towards disabled people,<sup>38</sup> evidence highlights the persistence of such attitudes, including negative attitudes towards disabled people claiming social security benefits, and negative assumptions about disabled people's human value and quality of life.<sup>39</sup>

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106; the employment tribunal power to make wider recommendations (repealed); third party harassment provisions (repealed).

<sup>37</sup> Gaps that raise concern include: workers who do not fall within the definition of an employee, contract workers or an agent of the employer; children in education with particular types of impairment affecting behaviour. EHRC (2016) response to the UN Special Rapporteur on the rights of persons with disabilities' call for evidence on disability-inclusive policies (England and Wales), available [here](#) [accessed: 5 August 2016].

<sup>38</sup> GB: The Equality Act 2010, section 149 (5), places duties on public bodies to have due regard to the need to tackle prejudice and promote understanding in order to 'foster good relations between persons who share a relevant protected characteristic and persons who do not share it'.

Fulfilling Potential: making it happen, strategy and action plan, available [here](#) [accessed: 5 August 2016].

Scotland: Report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion (September 2016), available [here](#) [accessed: 10 October 2016].

<sup>39</sup> See Abrams et al. (2016) Prejudice and unlawful behaviour: exploring levers for change, available [here](#) [accessed: 9 November 2016]; and NatCen (2012) British Social Attitudes 29, available [here](#) [accessed: 9 November 2016]. Experiences of disabled people suggest that attitudinal barriers still have negative impacts. Aiden, H. and McCarthy, A. (2014), 'Current attitudes towards disabled people', available [here](#) [accessed: 14 July 2016]; A 2011 survey of public attitudes in Northern Ireland found that in terms of the three types of disability considered, mental ill-health evoked the greatest number of negative responses. See ECNI (2011): 'Do You Mean Me? Discrimination, attitudes and experience in Northern Ireland', available [here](#) [accessed: 14 July 2016]. In Scotland, 37% of those who identified as having experienced a mental health problem had experienced some negative social impact, see Scottish Social Attitudes Survey 2013, Attitudes to mental health in Scotland, ScotCen Research, available [here](#) [accessed: 6 September 2016]; Scope (July 2012) Discrimination increases on back of 'benefit scroungers' rhetoric, available [here](#) [accessed: 6 September 2016]; Scotland: Challenges identified by the SOLD Network, available [here](#) [accessed: 6 September 2016].

**We recommend that the CRPD Committee asks:**

**12. How are the UK and devolved governments:**

- **addressing prejudice and negative attitudes towards disabled people, including disabled people claiming social security benefits?**
- **ensuring awareness of the CRPD among disabled people and throughout society?**

## **Accessibility (Articles 9, 21)**

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### **Overall framework**

There is currently no comprehensive UK-wide accessibility plan(s) as required by the CRPD General Comment on accessibility.<sup>40 41</sup>

Brexit may mean that the proposed European Accessibility Act will not be implemented into UK law.<sup>42</sup>

**We recommend that the CRPD Committee asks:**

**13. How do the UK and devolved governments intend to implement Article 9 in line with the requirements of General Comment No 2, in particular paragraph 33?<sup>43</sup>**

**14. How will the UK Government ensure that there are accessibility standards in products and services that are consistent with Article 9 on accessibility, such as those proposed in the European Accessibility Act?**

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The recent UN inquiry concerning the UK under Article 6 of the Optional Protocol to the CRPD also noted negative portrayal of disabled benefits claimants, and experiences of hostility. See note 69 below.

<sup>40</sup> The General Comment on accessibility makes it clear that 'states parties should adopt action plans and strategies to identify existing barriers to accessibility, set time frames with specific deadlines and provide both the human and material resources necessary to remove the barriers'. CRPD Committee (2014) General Comment No 2 on Article 9 Accessibility, para. 33, available [here](#) [accessed: 20 October 2016].

<sup>41</sup> Examples of sector-specific action plans that have been developed include the Department for Transport Accessibility Action Plan, available [here](#). However, a Transport Select Committee inquiry noted 'concerns...about how the Plan's tasks can be achieved and how their achievement will be measured'. See: House of Commons Transport Committee (2013) Access to transport for disabled people, vol. 1, para. 18, available [here](#) [accessed: 10 October 2016]. The government responded by publishing an update on its accessibility action plan. Whilst this does provide statistical information about journeys, it does not set targets or benchmarks. See Department for Transport (January 2015) Accessibility action plan and equality action plan: progress update, available [here](#) [accessed: 10 October 2016]. Also note that the Welsh Government's Framework for Action on Independent Living includes content in relation to accessibility. See note 25 above.

<sup>42</sup> This Act covers products and services such as computers, telephony, banking, ticketing and smart phones and aims to lower the prices of adapted goods, available [here](#) [accessed: 10 October 2016].

<sup>43</sup> That States parties should 'adopt action plans and strategies to identify existing barriers to accessibility, set timeframes with specific deadlines and provide both the human and material resources necessary to remove the barriers'.

## Housing, the built environment and planning

It has been estimated that 300,000 disabled people across GB are on housing waiting lists, and many disabled people continue to live in inaccessible and inappropriate housing.<sup>44</sup> Disabled people also face continued difficulties accessing the built environment,<sup>45</sup> including recreational sporting facilities.<sup>46</sup>

**We recommend that the CRPD Committee asks:**

### **15. What steps have the UK and devolved governments taken:**

- **to address the shortage of accessible and adequate housing for disabled people, including setting targets for building accessible homes?**
- **to ensure that the planning framework facilitates a built environment that is accessible and enables disabled people to live independently?**

## Transport

Despite some progress,<sup>47</sup> barriers to disabled people accessing transport persist:<sup>48</sup>

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<sup>44</sup> This indicates that there is a substantial need for adaptable housing, yet a survey noted that there is a severe national shortage of accessible or adaptable homes. The survey also found that many disabled people ended up living in unsuitable accommodation. 5 million people in the UK have a mobility problem and could benefit from a disability friendly home, while 75% of disabled adults in Britain report that they live in a home without an accessible front door. It also reported a study which suggested 1 in 6 disabled adults and half of all disabled children live in housing that isn't suitable for their needs, See: Leonard Cheshire (2014) No Place Like Home: Five Million Reasons to Make Housing Accessible, available [here](#) [accessed: 5 August 2016]. England: Only 7% of homes had all four accessibility features as recommended by Approved Document M of the Building Regulations 2010. Department for Communities and Local Government (2016) English Housing Survey, 2014-2015: adaptability and accessibility of homes, available [here](#) [accessed: 6 September 2016]. Scotland: It has been estimated that there are 17,000 disabled people in Scotland in need of a wheelchair accessible home. See Horizon Housing and CIH (2012) Mind the step: An estimate of housing need among wheelchair users in Scotland, available [here](#) [accessed: 5 August 2016].

<sup>45</sup> GB: Evidence provided to a parliamentary inquiry identified a number of difficulties experienced by disabled people. See: House of Lords Select Committee on the Equality Act 2010 and Disability, The Impact of the Equality Act 2010 on Disability, March 2016, pp. 132-136, available [here](#) [accessed: 5 August 2016]. We welcome an inquiry currently being carried out into disability and the built environment by the Women and Equalities Committee, see [here](#) [accessed: 1 February 2017].

Northern Ireland: An audit of accessibility to services for disabled people across five cities and towns found that the benchmark score was 2.43 on a scale of 1 to 4 (where 3 is good or satisfactory), available [here](#) [accessed: 10 October 2016]. Accessibility audits of seven towns highlighted the persistence of unnecessary physical barriers, available [here](#) [accessed: 10 October 2016].

<sup>46</sup> Leonard Cheshire/Comres (Feb 2016), Barriers to Sport and Exercise. Comres representative online survey covering Great Britain about access to leisure facilities like gyms and swimming pools, available [here](#) [accessed: 24 August 2016].

<sup>47</sup> UK Government (2016) UK response to the questionnaire provided by Catalina Devandas-Aguilar: Special Rapporteur on the Rights of Persons with Disabilities, available [here](#) [accessed 16 August 2016].

<sup>48</sup> Some concerns include:

Northern Ireland: Disabled people experience poor physical access, customer service and access to information. See ECNI (2013) ABC audit benchmark change – State of disability access report 2013, available [here](#); Disabled people are 7 times more likely to have difficulty getting on and off vehicles than non-disabled people and 3 times more likely to have difficulty getting to public transport. See: Imtac (January 2015)

- Rail travel: there is a statutory and policy framework for station accessibility, applicable to GB.<sup>49</sup> However, unlike the UK Government's commitment for rail vehicles, there is no target date to make rail stations fully accessible.<sup>50</sup>
- Buses and coaches: accessibility of buses is improving,<sup>51</sup> but concerns remain over bus routes<sup>52</sup> and disability awareness.<sup>53</sup> UKIM welcomes a recent court ruling strengthening wheelchair users' right to priority access to wheelchair spaces on buses.<sup>54</sup>
- Taxis:<sup>55</sup> there is no national requirement to make a proportion of taxi or private hire vehicle fleets accessible.<sup>56</sup>

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Lessons learned from 'walking audits', available [here](#). In addition, the attitude of those providing transport services remains a key barrier. See Imtac (March 2013) Improving the provision of disability equality and disability awareness training, available [here](#) and Harper et al (January 2012) Disability programmes and policies: How does Northern Ireland measure up, available [here](#) [accessed: 10 September 2016]. Wales: Frequently users of public transport have reported a lack of disabled access, see Welsh Government (2010) Research to support the Public Transport Users' Committee for Wales' work on integrated transport, available [here](#) [accessed: 25 September 2016].

Scotland: there are problems with access to and affordability of transport, particularly in rural areas. SHRC (October 2012) Getting it right? Human Rights in Scotland, available [here](#) and SATA (2015), Accessible Transport Strategy and Action Plan for Scotland, p. 8, available [here](#) [accessed: 25 September 2016].

<sup>49</sup> This includes a statutory Code of Standards for accessible rail stations, applicable whenever infrastructure or facilities are upgraded, available [here](#) [accessed: 10 October 2016]. The Access for All Scheme, which helps fund step-free stations and other improvements in addition to scheduled station upgrades, has been extended until 2024 due to expenditure being deferred, with reductions in year on year budgets, see [here](#).

<sup>50</sup> Department for Transport (May 2015) Policy Paper: Accessible Rail Transport, available [here](#) [accessed: 16 August 2016]: 'While accessible rail fleet will be achieved by 1 January 2020, it is likely that a small number of trains will not fully comply [with accessibility regulations]' (summary). Many journeys are still not accessible even if some stations along the route are. Despite welcome initiatives to improve station accessibility, it is still unclear when or if the rail network will become fully or even mainly accessible. Papworth Trust (2015) Improving rail travel for disabled passengers in Britain, available [here](#) [accessed: 10 October 2016].

<sup>51</sup> DfT (2016) Annual bus statistics: year ending, March 2016, available [here](#) [accessed: 10 October 2016].

<sup>52</sup> There is concern that cuts to bus routes across GB have a detrimental impact on disabled people. See: Campaign for Better Transport (2014) Buses in Crisis, available [here](#) [accessed: 10 October 2016]; Sunday Post (2016) Fears over Scotland's bus services (news article), available [here](#) [accessed: 10 October 2016].

<sup>53</sup> A parliamentary committee has expressed its disapproval that the UK government used exemptions to EU legislation that requires mandatory disability awareness training for bus drivers. See: House of Commons Transport Committee (2013) Access to transport for disabled people, vol. 1, para. 18, available [here](#) [accessed: 10 October 2016]. However, the exemption ends in March 2018.

<sup>54</sup> *FirstGroup Plc v Paulley* [2017] UKSC 4, available [here](#). Also see: EHRC (18 January 2017) Wheelchair spaces on buses must be a priority, court rules (press release), available [here](#) [accessed: 18 January 2017].

<sup>55</sup> Section 165 of the Equality Act 2010, if fully brought into force, would make changes to the service that disabled passengers can expect from taxi drivers in England and Wales (arrangements in Scotland are devolved), and place duties on drivers who have an accessible vehicle to carry a passenger while in the wheelchair without an additional charge. The EHRC welcomes the UK Government's announcement in May 2016 to make taxis accept and assist wheelchair users.

<sup>56</sup> This is deferred to individual local licensing authorities.

Other concerns: (i) almost 2 in 3 wheelchair users report being charged more. See Extra Costs Commission (March 2015), Driving down the extra costs disabled people face: Interim report, available [here](#); (ii) The proportion of taxis and particularly private hire vehicles that are accessible is relatively low. See: DfT (2013) and (2015) Taxi and private hire vehicle statistics, available [here](#) and [here](#) [accessed: 5 August 2016].

**We recommend that the CRPD Committee asks:**

**16. How are the UK and devolved governments:**

- **addressing the barriers experienced by disabled people on public transport?**
- **ensuring that personnel of all public transport providers are equipped with the skills and knowledge to support disabled passengers?**

A parliamentary inquiry expressed concern over the lack of real-time information available to people with sensory impairments on trains and buses.<sup>57</sup> A recent amendment to the Bus Services Bill is welcome, but it does not directly require the provision of accessible information.<sup>58</sup>

**We recommend that the CRPD Committee asks:**

**17. How will the UK and devolved governments ensure that all new buses and trains provide accessible real-time travel information?**

**Information and communication**

Disabled people continue to experience barriers to accessing information,<sup>59</sup> and are more likely to have never used the internet.<sup>60</sup> Those who do use the internet face problems with digital accessibility,<sup>61</sup> and find some government websites inaccessible.<sup>62</sup>

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<sup>57</sup> House of Lords, The Equality Act 2010: the impact on disabled people (24 March 2016) paras 291-93 available [here](#) [accessed: 5 August 2016]. The UK Government response did not accept the inquiry's recommendation to amend regulations to require that all new buses and trains provide accessible real-time travel information. See: Government response to the House of Lords Select Committee on the Equality Act 2010 and Disability, available [here](#) [accessed: 6 September 2016].

<sup>58</sup> The UK Government has tabled an Amendment 101 to the Bus Services Bill (applicable to England and Wales) for a regulation-making power under the Equality Act 2010 to require accessible information – notably audio-visual announcements – on buses, backed by statutory guidance. See DfT (2016) Bus Services Bill: accessible information regulations scoping note, available [here](#) [accessed: 10 December 2016]. While this is a welcome development, the amendment confers a power on the Secretary of State to order, rather than directly requiring, that all buses to include such information.

<sup>59</sup> GB: See House of Lords (March 2016) The Equality Act 2010: the impact on disabled people, chapter 4, available [here](#) [accessed: 5 August 2016].

Northern Ireland: A review of health information accessibility for people with learning disabilities found that a strategic and standardised approach to developing such information, including accessible appointment letters, had not been realised: ECNI (2013) Review of the formal investigation into the accessibility of health information for people with a learning disability, available [here](#) [accessed: 5 August 2016].

<sup>60</sup> The Internet Access Quarterly Update 2016, a UK-wide report, found that groups of adults who were more likely to have never used the Internet included people over 65 and people with a disability, see [here](#) [accessed: 24 November 2016].

<sup>61</sup> The Equality Act 2010 covers digital accessibility. However, the law leaves a degree of interpretation for service providers about how far they are required to go to increase digital accessibility and there is as yet no

**We recommend that the CRPD Committee asks:**

**18. What steps have the UK and devolved governments taken to:**

- **ensure that all communications (including online forms) of public bodies are accessible to disabled people?**
- **remove barriers to internet access for disabled people?**

There are concerns in the D/deaf and D/deafblind communities<sup>63</sup> about being unable to access services because of the lack of availability of good quality British Sign Language (BSL)/English interpreters and a failure to translate information into BSL. There are also concerns over the lack of sign language courses.<sup>64</sup>

**We recommend that the CRPD Committee asks:**

**19. How do the UK and devolved governments support effective communication between D/deaf, D/deafblind and hearing people within families and with education, health and social care providers?**

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UK case law precedent on web accessibility to clarify the position: Barton, F. et al (March 2015) Digital Accessibility: A brief landscaping, available [here](#). The actions in the UK Government's Digital Inclusion Strategy do not address accessibility directly, nor identify clear accountability for improvement: Cabinet Office and Government Digital Service (4 December 2014) Government Digital Inclusion Strategy, available [here](#) [accessed: 26 September 2016].

<sup>62</sup> House of Lords (March 2016) The Equality Act 2010: the impact on disabled people, chapter 4, available [here](#) [accessed: 5 August 2016]. In Northern Ireland, a focus group of representatives from voluntary organisations and disabled people reported that they found some government websites inaccessible. See Harper et al (January 2012) Disability programmes and policies: How does Northern Ireland measure up, available [here](#) [accessed: 10 September 2016].

<sup>63</sup> Deafblind Scotland (2016) Deafblind people's views on the Deafblind National Action Group Long Term Aims and Ambitions, available [here](#). BDA Scotland (2016) Access and Inclusion (Health) Review: Deaf BSL users' engagement with health care in Scotland, available [here](#) [accessed 24 November 2016].

<sup>64</sup> Scotland: there are problems in relation to access to health services including BSL/English interpreters not being available at short notice and a lack of suitable residential mental health and community support services for Deaf BSL users. Kyle et al (2005) Investigation of Access to Public Services in Scotland using BSL, available [here](#) [accessed: 24 September 2016].

Northern Ireland: Harper et al (2012) Disability programmes and policies: How does Northern Ireland measure up? available [here](#). Although there are now 28 registered interpreters compared to 4 in 2004 (for 3,500 British Sign Language users and 1,500 Irish Sign Language users), it is acknowledged that 'more needs to be done' and there is a need to promote the beneficial effects of sign language as a family-centred early intervention for Deaf children, including free Family Sign Language classes, see Department for Communities (2016) Sign Language Framework Consultation, available [here](#) [accessed: 25 September 2016].

## Insurance

At least half a million disabled people have been turned down for insurance and there is a lack of affordable insurance for disabled people.<sup>65</sup> Insurers are exempt from the disability provisions of the Equality Act 2010, provided they are reasonably relying on relevant actuarial data.<sup>66 67</sup>

**We recommend that the CRPD Committee asks:**

**20. How will the UK Government ensure disabled people have improved access to affordable insurance?**

## Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28)

UKIM reiterates concerns raised in a letter to the UK Government in December 2016<sup>68</sup> following the CRPD Committee's UK inquiry report<sup>69</sup> and UK Government's response,<sup>70</sup> and in EHRC's 2016 report on socio-economic rights.<sup>71</sup>

<sup>65</sup> Extra Costs Commission (2016) Driving down the extra costs disabled people face. Progress review October 2016, available [here](#) [accessed: 10 September 2016].

The Financial Inclusion Commission heard Evidence that some disabled people may face unfair exclusion from buying insurance, or disproportionately high costs. See Financial Inclusion Commission (2015) Financial Inclusion: Improving the Financial health of the Nation, available [here](#) [accessed: 10 September 2016].

The Financial Conduct Authority has also identified lack of 'suitable and affordable' insurance products as a significant issue for people with 'pre existing medical conditions'. FCA (2015), Occasional paper 8: Vulnerable Customers, p. 49, available [here](#) [accessed: 10 September 2016].

<sup>66</sup> Equality Act 2010 Schedule 3 para. 21. This is applicable to Great Britain.

<sup>67</sup> This can add to additional costs facing disabled people, their exclusion from mainstream financial products, and limit where they can live and travel. Extra Costs Commission (2015) Driving down the extra costs disabled people face: final report, available [here](#), and progress review October 2016, available [here](#) [accessed: 10 December 2016].

<sup>68</sup> UKIM (2016) Letter to the Minister of State for Disabled People, Health and Work in response to the CRPD committee inquiry, available [here](#), with attached annex outlining key concerns, available [here](#) [accessed: 3 December 2016]. A letter in reply from the Minister on 19 January 2017 reiterated the UK Government's response to the UN inquiry, available [here](#) [accessed: 19 January September 2017].

<sup>69</sup> CRPD Committee (2016) Inquiry concerning the UK carried out by the Committee under Article 6 of the Optional Protocol to the Convention, Report, p. 21, available [here](#) [accessed 10 November 2016]. The Inquiry concluded that 'there is reliable evidence that the threshold of grave or systematic violations of the rights of persons with disabilities has been met in the State party' (para. 113).

<sup>70</sup> UK Government (2016) Response to the Report by the UN CRPD Committee under Article 6 of the Optional Protocol to the Convention, p. 26, available [here](#) [accessed: 20 November 2016].

<sup>71</sup> EHRC (April 2016) Socio-economic rights in the UK, pp 20-26, available [here](#) [accessed: 5 August 2016].

## Poverty and material deprivation

Disabled people are more likely to live in poverty than people who are not disabled,<sup>72</sup> and face material deprivation.<sup>73 74</sup> For those living in families where at least one member is disabled, 4.1 million individuals are in absolute low income.<sup>75</sup>

### We recommend that the CRPD Committee asks:

#### 21. Can the UK and devolved governments:

- set out the steps taken to address higher levels of poverty among disabled people?
- explain how they ensure the rights of disabled adults and children are prioritised within anti-poverty initiatives?

## Impact of social security reforms

Since 2010, successive UK Governments<sup>76</sup> have reformed social security.<sup>77 78</sup> These reforms<sup>79</sup> have had a particularly disproportionate, cumulative impact on disabled people,

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<sup>72</sup> In the UK in 2014/15, families with at least one disabled person were more likely to live in both relative and absolute poverty than families without. See DWP (2016) Households below average income: 1994/95 to 2014/15, available [here](#) [accessed: 10 December 2016]. This applied to children and working age adults, but not to pensioners. For example, 36% of children and 30% of working age adults in families with one or more disabled members lived in relative poverty after housing costs.

<sup>73</sup> Material deprivation is a measure of what households can afford, and so better reflects the standard of living than income alone. It is based on responses to eight questions on topics including: a week's holiday away from home each year, contents insurance, small regular savings and adequate heating. See online data table [EF2.2](#) for full details [accessed: 10 December 2016].

<sup>74</sup> In 2012/13, there was a difference in material deprivation in Great Britain between disabled and non-disabled people, and an increase in material deprivation over time since 2007/08 for both groups. The mean material deprivation score for working age people living in households above the income poverty threshold of 60% of contemporary median income after housing costs for disabled people was 1.7 (cf. 0.8 for non-disabled people). This gap widened over time (in 2007/08 it was 1.4 and 0.7 respectively). See online data table [EF2.2](#) [accessed: 10 December 2016].

<sup>75</sup> DWP (2016) Households Below Average Income: An analysis of the income distribution 1994/95–2013/14 June 2015 (United Kingdom), available [here](#) [accessed: 10 September 2016].

<sup>76</sup> While the UK Government has reserved powers in the area of social security, devolved governments have taken separate steps to mitigate the impact of the changes in Scotland and Wales. The Scotland Act 2016 devolved new powers to the Scottish Parliament, see [here](#) [accessed: 22 August 2016].

<sup>77</sup> This has reduced disability welfare budgets and changed employment and support arrangements for disabled people, most recently through the Welfare Reform and Work Act (2016).

<sup>78</sup> The Northern Ireland Executive agreed a welfare reform mitigations strategy, available [here](#) [accessed: 5 August 2016]. However, the mitigations are all time-limited e.g. those recipients of DLA who, after assessment, qualify for PIP but at a reduced rate, are eligible for mitigation payments for one year only.

<sup>79</sup> Including the closure of the Independent Living Fund (except in Scotland where the Scottish Government has continued to protect eligible users' awards via the Scottish Independent Living Fund), the transition from DLA to PIP, some measures brought about through Universal Credit, the under-occupation deduction to housing benefit and other measures.



women and children,<sup>80</sup> and have resulted in regression of disabled people's rights to live independently and to an adequate standard of living. The UK Government has assessed the equality impact of individual policies,<sup>81</sup> but not the cumulative impact of all the changes.<sup>82</sup> A study found that the cumulative impact of the UK Government's tax and welfare reforms 2010-15 was more negative for families containing at least one disabled person, particularly a disabled child,<sup>83</sup> and showed that cumulative impact assessments are both feasible and practicable.<sup>84</sup>

**We recommend that the CRPD Committee asks:**

**22. How is the UK Government ensuring that disabled people (and families with disabled children) in receipt of social security have an adequate standard of living for themselves and their families?**

**23. How has the UK Government:**

- **monitored the impact of welfare reform on disabled people?**
- **justified regressive measures by demonstrating they are temporary, necessary, proportionate, non-discriminatory, and do not undercut a core minimum level of rights protections?**
- **mitigated adverse impacts on disabled people in the medium- to long-term?**

**24. Will the UK Government assess the cumulative impact of tax and social security changes on disabled people?**

<sup>80</sup> Social Security Advisory Committee (2014) *The Cumulative Impact of Welfare Reform: a commentary*, available [here](#); Welsh Government analysis of welfare reforms on people with protected characteristics, stage 3 research, available [here](#); EHRC (April 2016) *Socio-economic rights in the UK*, pp. 20-26, available [here](#); House of Lords (24 March 2016) *The Equality Act 2010: the impact on disabled people*, p.106, para. 368, available [here](#); CRPD Committee (2016) *Inquiry concerning the UK carried out by the Committee under Article 6 of the Optional Protocol to the Convention*, Report, p. 21, available [here](#) [accessed: 10 November 2016].

<sup>81</sup> EHRC (2015) *Written evidence submitted by the EHRC on the Welfare Reform and Work Bill*, available [here](#) [accessed: 22 August 2016].

<sup>82</sup> In its response to the CRPD Committee's inquiry, the UK Government states that it has 'published cumulative analysis of the impacts of its tax, welfare and public spending on households', but acknowledges that 'This analysis is not broken down into sub-groups, such as disabled people, due to significant modelling limitations to the robustness of such analysis'. See CRPD Committee (2016) *Report of the Inquiry Concerning the UK*, paras 83-85, available [here](#) [accessed: 10 November 2016]; UKIM maintains that such cumulative impact analysis is both feasible and practicable: see Reed, H. and Portes, J. (2014), 'Cumulative Impact Assessment: A Research Report by Landman Economics and NIESR for the EHRC', available [here](#) [accessed: 22 August 2016].

<sup>83</sup> Reed, H. and Portes, J. (2014), 'Cumulative Impact Assessment: A Research Report by Landman Economics and NIESR for the EHRC', available [here](#) [accessed: 22 August 2016]. It pointed to the significant reductions to working-age welfare, and the high proportion of working-age welfare spent on disabled people, particularly those on low incomes, as the likely reason.

<sup>84</sup> UKIM also notes that the recent CRPD Committee inquiry report recommended that the UK 'carry out human rights-based cumulative impact assessment of the whole range of intended measures that would have an impact on the rights of persons with disabilities.' See note 69, para. 114(a).

## Independent living funding

The UK Independent Living Fund (ILF)<sup>85</sup> was closed on 30 June 2015,<sup>86</sup> and the continued support of ILF users was transferred to local authorities (LAs) in England and the devolved administrations.<sup>87</sup>

In England, the monetary transfer to LAs is not ring-fenced,<sup>88</sup> and there is no mechanism to monitor how LAs in England are supporting independent living. There are concerns that the ILF's closure has resulted in a postcode lottery for support and could force some disabled people into residential care, as LAs may not use the funding to cover independent living costs.<sup>89 90</sup>

In Northern Ireland the ILF is administered by the Scottish ILF<sup>91</sup> but restricted to existing users leading to its eventual de facto closure, with no clear indication of future arrangements.<sup>92</sup>

### We recommend that the CRPD Committee asks:

**25. Where the UK Government has delegated responsibility for independent living funding to local authorities in England, how has it ensured compliance with Article 19?**

**26. How has the Northern Ireland Executive ensured that the closure of the**

<sup>85</sup> The ILF provided financial support to disabled people to live independently in their homes and participate in education, training and employment. It was available to those receiving the higher rate of Disability Living Allowance and enabled them to access a package of joint Independent Living Fund/local authority care to enable them to live in the local community rather than in residential care.

<sup>86</sup> DWP (6 March 2014) Decision on the future of the ILF (news article), available [here](#). Also see: House of Commons Library (17 November 2016) The closure of ILF, available [here](#) [accessed: 10 December 2016].

<sup>87</sup> DWP (6 March 2014): 'Future of the Independent Living Fund', available [here](#) [accessed: 22 August 2016].

In Scotland, the Scottish Government supports users through the Scottish Independent Living Fund (SILF) and provides support to existing and new users. In Wales, the Welsh Independent Living Fund or Grant will run until March 2017 and support previous ILF recipients. By 31 March 2019 all current ILF recipients will have their care and support needs met through normal social care provision. See Welsh Government (3 November 2016) Written statement – future support arrangements in Wales, available [here](#); Welsh Government (2016) Welsh Independent Living Grant, available [here](#) [accessed: 4 November 2016].

<sup>88</sup> Evidence from local authorities on transition arrangements indicated that most had not ring-fenced ILF funding and some were not planning to do so. See DRUK (8 April 2015) Most councils will not ring-fence ILF resources (news article), available [here](#) [accessed: 6 September 2016].

<sup>89</sup> The EHRC has intervened in two Judicial Review cases about the ILF: *Stuart Bracking, Paris L'amour, Gabriel Pepper, Anne Pridmore, John Aspinall (by his mother and Litigation Friend Evonne Taylforth) (claimants) v SS for Work & Pensions* (defendant) and Equality and Human Rights Commission (Intervener) High Court (Administrative Court); and *Pepper and Aspinall v Secretary of State for Work and Pensions*.

<sup>90</sup> Inclusion London (2016) One year on: Evaluating the impact of the closure of the Independent Living Fund, p. 8, available [here](#). See the England supplementary report for further details. See also Jarrett, T. (2016) Local replacements for the Individual Living Fund (ILF). House of Commons Library Briefing Paper Number 7788, available [here](#) [accessed: 10 January 2017].

<sup>91</sup> Written statement, Health Minister Simon Hamilton MLA (19 May 2015): 'New arrangements for the future support of Independent Living Fund users In Northern Ireland', available [here](#) [accessed: 22 August 2016].

<sup>92</sup> Welfare Weekly (20 May 2015) 'Northern Ireland Independent Living Fund To Be Administered In Scotland' (news article), available [here](#) [accessed: 5 August 2016].

**Independent Living Fund to new applications will not result in a gap in the provision of health and social care services for those who were previously eligible but no longer able to apply?**

**Adult social care and support**

Across the UK, there is increasing demand but reduced funding for social care, leading to difficulties in delivering support.<sup>93</sup> Local authorities in GB<sup>94</sup> and Health and Social Care Trusts in Northern Ireland<sup>95</sup> can charge people all or some of the cost of their social care, and there are longstanding concerns about the severity of need required for someone to be eligible for state-funded social care.<sup>96</sup>

**We recommend that the CRPD Committee asks:**

**27. How are the UK and devolved governments ensuring that the continuing overall reduction in central government funding to local authorities does not result in**

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<sup>93</sup> In England, there have been reductions in the overall number of disabled people receiving LA-funded adult social care support, and of the amount of support received amongst some disabled people still receiving LA support. See: Care Quality Commission (2016) The state of health care and adult social care in England 2015/16, available [here](#). Community Care Statistics, Social Services Activity England, National Tables 2014-15 and the tables for 2015-16 show there was a decrease of around 2% in the number of people accessing long term support during the year to 31 March 2016 compared with the previous year. See tables LTS001a in the National Tables [here](#) and [here](#). See also: Brawn et al (January 2013) The other care crisis: Making social care funding work for disabled adults in England, available [here](#) [accessed: 5 January 2017].

In Wales, most adult care services provided reasonable care, but in a number of cases the quality of care was not acceptable. In addition, the volume and complexity of need is increasing, while local authority and health board budgets are being squeezed. See: Care and Social Service Inspectorate Wales (2016) Improving adult care, childcare and social services in Wales. Chief Inspector's Annual Report Improving adult care, childcare and social services in Wales, 2014-2015, available [here](#) [accessed: 5 January 2017].

In Scotland, disabled people have reported that the system is in crisis and services are failing to deliver the social care needed. See ILiS (Dec 2015) Briefing on social care funding in Scotland, available [here](#). The Scottish Government has committed to delivering reforms to adult social care and the voices of experiences of disabled people and their organisations being at the centre of these reforms see Delivery Plan to 2021, available [here](#) [accessed: 12 January 2017].

In Northern Ireland there are similar concerns. Disabled people are concerned that reform of health and social care system is focused on cost savings and will result in reduced services. Byrne et al (May 2014) Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD, available [here](#) [accessed: 10 October 2016].

<sup>94</sup> In GB local authorities can charge for adult social care services. For England and Wales see DRUK factsheet, available [here](#). For Scotland, see COSLA guidance, available [here](#) [accessed: 10 October 2016].

<sup>95</sup> Citizens Advice Northern Ireland social care and support advice, available [here](#) [accessed: 10 October 2016].

<sup>96</sup> England: The numbers of disabled people getting LA funded support has been continually reducing since 2008 as eligibility criteria have been tightened. See: Brawn et al (January 2013) The other care crisis: Making social care funding work for disabled adults in England, available [here](#) [accessed: 5 January 2017]. See also: ADASS (2016) ADASS budget survey 2016. Association of Directors of Adult Social Services, p. 13, available [here](#), which also notes the tension between 'prioritising statutory duties towards those with the greatest needs and investing in services that will prevent and reduce future needs' [accessed: 5 January 2017].

Scotland: See ILiS (Dec 2015) Briefing on social care funding, available [here](#) [accessed: 5 January 2017].

## **regression of disabled people's enjoyment of the right to independent living under Article 19?**

### **Support for carers**

Families of disabled people often provide significant care. Such carers can experience difficulties in: paying bills; undertaking educational and employment opportunities; and maintaining good health.<sup>97</sup>

### **We recommend that the CRPD Committee asks:**

**28. What measures have the UK and devolved governments taken to ensure adequate support, including respite care, for:**

- **Disabled parents**
- **Disabled carers**
- **Parents with a disabled child**
- **Carers for a disabled person**
- **Young, sibling and peer carers?**

### **Work Capability Assessments**

The Department for Work and Pensions (DWP) uses contractors to carry out Work Capability Assessments (WCAs).<sup>98</sup> Despite changes following reviews, concerns include:

- Claimants with serious health conditions or disabilities have been found 'fit for work'. The success rate for appeals against decisions has been relatively high, but there are concerns about the negative impact of assessments, reassessments and poor decisions on the physical and mental health of claimants.<sup>99 100 101</sup>

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<sup>97</sup> In Northern Ireland, many carers are of advanced years and still providing a significant amount of caring to their loved ones on a full-time basis. See: NIHRC (2014): 'The Human Rights of Carers in Northern Ireland', available [here](#). Carers in other parts of the UK also experience difficulties. See: Carers UK (2016) State of Caring 2016, available [here](#) [accessed: 4 November 2016].

<sup>98</sup> Employment and Support Allowance (ESA) is designed to cover day to day living costs for disabled people or those with a health condition who are unable to work. A person must undergo a WCA to determine whether they have a limited capacity for work and if they are capable of 'work-related activity'.

<sup>99</sup> Kennedy et al (2016) Welfare Reform and disabled people. House of Commons Briefing Paper 7571, 25 April, p. 7 available [here](#) [accessed: 16 August 2016].

<sup>100</sup> The assessment method has also been successfully challenged in the courts on the grounds that it puts those with mental health problems at a disadvantage. In *R (MM & DM) v Secretary of State for Work and Pensions* [2013], the Court of Appeal agreed that the DWP has to make adjustments for persons with a mental health issue undergoing the assessment, for example by obtaining further medical evidence if there is evidence that the applicant has had suicidal thoughts.

- WCAs have been linked to some suicides and cases of deteriorating mental health.<sup>102</sup> While the UK Government has stated that no causal link should be drawn,<sup>103</sup> further independent assessment is required.

In a recent Green Paper the UK Government recognises the need for reform.<sup>104</sup> In UKIM's analysis, any reforms need to address the above concerns to ensure CRPD compliance.

**We recommend that the CRPD Committee asks:**

**29. How is the UK Government ensuring that processes in place to deliver Employment and Support Allowance, including Work Capability Assessments, are compliant with the CRPD, and delivered in accordance with CRPD requirements by contractors?**

## Employment (Article 27)

### Employment gap

Disabled people across the UK continue to be less likely to be in employment than non-disabled people.<sup>105</sup>

Although the UK Government has set a goal to halve the employment gap for disabled people<sup>106</sup> there has been limited progress since 2010.<sup>107 108</sup>

<sup>101</sup> Mind (28 October 2015), People receiving ESA due to their mental health more likely to be punished than helped into work, available [here](#) [accessed: 10 October 2016].

<sup>102</sup> WCAs have been linked to 590 suicides and 275,000 cases of deteriorating mental health between 2010 and 2013. Barr et al (2016). 'First, do no harm': are disability assessments associated with adverse trends in mental health? A longitudinal ecological study. *Journal of Epidemiology and Community Health*, available [here](#) [accessed: 4 August 2016].

<sup>103</sup> UK Government (2016) response to CRPD inquiry report, available [here](#) [accessed: 9 November 2016].

<sup>104</sup> Department for Work and Pensions and Department of Health (DWP and DH) (2016) *Improving Lives: The Work, Health and Disability Green Paper*, available [here](#) [accessed: 3 November 2016].

<sup>105</sup> In GB as a whole, 47.6% of disabled people aged 16-64 were in employment compared with 79.2% of non-disabled people in 2015/16, a gap of 31.6%. Employment rates were particularly low for people with: severe or specific learning difficulties (19.9%), difficulty in seeing (30.3%), or mental health conditions (31.3%). See EHRC (forthcoming, 2017) *Being disabled in Britain and associated data table EG1.1*; Scottish Government (2013): *Equality Outcomes – Disability Evidence Review*, p. 4, available [here](#) [accessed: 5 January 2017].

<sup>106</sup> Conservative Party Manifesto (2015), available [here](#); Lords Chamber debate (25 January 2016) *Welfare Reform and Work Bill*, available [here](#) [accessed: 24 November 2016]. The UK Government has a commitment to bring approximately 1.2 million disabled people into work by 2020.

<sup>107</sup> The commitment to halve the gap is unlikely to be met until at least 2030. See: Trades Union Congress (2016) *Disability and Employment*, available [here](#) [accessed: 4 January 2017]. Limited progress has also been acknowledged by the CRPD Committee in its inquiry into the UK. See note 69.

<sup>108</sup> Despite requests from the House of Lords, the Department for Work and Pensions (DWP) declined to release an annual progress report on the progress the UK Government has made in addressing its target of

While UKIM welcomes a number of UK Government initiatives,<sup>109</sup> issues remain:

- Despite positive benefits of the Access to Work scheme,<sup>110</sup> there is low awareness among employers; concerns that it focuses on those with physical impairments;<sup>111</sup> and that a cap on support provided will particularly affect those with a hearing impairment.<sup>112</sup>
- Research published in 2014 found no difference in support and commitment to disabled workers between companies that did or did not display the Positive about Disabled People 'Two Ticks' symbol.<sup>113</sup> The Department for Work and Pensions (DWP) acknowledged the need to make the new Disability Confident self-assessment accreditation scheme more effective than its predecessor.<sup>114</sup>
- There are concerns that combining the support currently provided by the Work Programme<sup>115</sup> and Work Choice<sup>116 117</sup> into one programme delivered by non-specialist prime contractors, will 'diminish the quality and effectiveness of support available' for disabled people.<sup>118</sup>

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halving the disability employment gap by 2020. See: Disability Wales (January 28 2016), DWP refuses to back down over annual disability employment report, available [here](#) [accessed: 30 September 2016]. However, an inquiry into the Government's commitment was launched by the DWP in March 2016. See: Work and Pensions Committee (13 July 2016), Disability employment gap inquiry, available [here](#) [accessed: 30 September 2016]. The findings of the inquiry have not yet been published.

<sup>109</sup> For further information see UK Government (2016) response to the questionnaire provided by the Special Rapporteur on the Rights of Persons with Disabilities, available [here](#) [accessed: 24 September 2016].

<sup>110</sup> Access to Work (AtW): provides practical and financial support to disabled people and their employers. It covers GB and is delivered by DWP through Jobcentre Plus. Reviews have found the scheme to be cost effective, with positive benefits including increased productivity and staff retention and reduced sickness absence. See: Sayce, L. (2011) Getting in, staying in and getting on: Disability employment support fit for the future, available [here](#) [accessed: 30 September 2015].

<sup>111</sup> Dewson et al (2009) Evaluation of Access to Work: Core Evaluation, Department for Work and Pensions, Research Report No 619, available [here](#); and Sayce, L. (2011): Getting in, Staying in and Getting on. Disability employment support fit for the future, available [here](#) [accessed: 24 September 2016].

<sup>112</sup> While the UK Government has responded positively to calls to increase AtW funding, it has capped individual support at one and a half times the average salary. The UK Government has acknowledged the risk of costs falling back on employers which may discourage them from employing disabled people, and that the majority of those affected by the cap are those with a hearing impairment. The DWP estimated that savings can be used to fund an additional 1,000 average users or 3,000 places on the Mental Health Support Service. See: Department for Work and Pensions (DWP) (2015) Equality Analysis for the Future of Access to Work, available [here](#) [accessed: 9 October 2015].

<sup>113</sup> Hoque et al (2014), Employer disability practice in Britain: assessing the impact of the Positive About Disabled People 'Two Ticks' symbol, available [here](#) [accessed: 5 September 2016]. It could be possible for an employer to get to level three without actually employing disabled people.

<sup>114</sup> Recruiter (11 June 2014) 'Outdated two-ticks symbol needs revamping, says DWP' (news article), available [here](#) [accessed: 4 January 2017].

<sup>115</sup> A shorthand term for a number of schemes aimed at assisting jobseeker allowance claimants to find work.

<sup>116</sup> Introduced in October 2010, Work Choice is a specialist employment programme for disabled people offering 3 levels of help: work entry; in-work support for up to two years; and longer term in-work support.

<sup>117</sup> In the 2015 Spending Review, government announced its intention to combine the Work Programme and Work Choice into a single Work & Health Programme from 2017 to improve links between health services and employment support.

<sup>118</sup> The Work and Pensions Committee recommended that government retain a separate, voluntary expanded employment programme and that specialist organisations should continue to deliver it. Work and Pensions Committee (2015) A specialist programme for disabled people, available [here](#) [accessed: 16 August 2016].

- In November 2016 the UK Government published a Green Paper<sup>119</sup> setting out proposed reforms to: improve support for people with health conditions and disabilities; explore the roles of employers; reduce the disability employment gap; and promote integration across health and employment. This extensive package of proposals for consultation is a key opportunity for improving compliance with Article 27.

In Northern Ireland, stakeholders have expressed concerns that the Supporting Equality Through Inclusive Employment strategy and action plan<sup>120</sup> must be properly resourced and implemented.<sup>121</sup>

In Scotland, employment support programmes for disabled people will be delivered by the Scottish Government from 1 April 2017.<sup>122</sup>

**We recommend that the CRPD Committee asks:**

**30. What steps is the UK Government taking to fulfil its own commitment to halving the disability employment gap; by what date does it plan to meet this commitment; and how will measures address the full range of impairments, including long-term and degenerative conditions?**

**31. How has the UK Government ensured that changes to the Access to Work programme comply with CRPD Article 27?**

**32. How will the UK and devolved governments ensure that new employment support programmes, and changes resulting from the ‘Improving Lives’ Green Paper, will help disabled people find and maintain work effectively?**

## **Barriers to employment**

Disabled people continue to face barriers to obtaining and maintaining employment including:

- difficulties getting employers to make reasonable adjustments to support recruitment and staying in work<sup>123 124</sup>

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<sup>119</sup> Department for Work and Pensions and Department of Health (DWP and DH) (2016) Improving Lives: The Work, Health and Disability Green Paper, available [here](#) [accessed: 3 November 2016].

<sup>120</sup> Department for Communities (2016) ‘Supporting Equality Through Inclusive Employment – An Employment Strategy for People with Disabilities’, available [here](#) [accessed: 3 November 2016].

<sup>121</sup> Department for Communities (2016) Indicator 42 Stakeholder Engagement Event Report, p. 6.

<sup>122</sup> Employment support programmes were devolved to Scotland as part of the most recent devolution settlement. The Scottish Government recently identified 22 actions to improve the employment of disabled people. Scottish Government (2016) A Fairer Scotland for disabled people, available [here](#) [accessed 10 January 2017].

- discrimination in recruitment<sup>125</sup>
- obstacles to securing apprenticeships<sup>126</sup>
- difficulties with transport and workplace access, negative attitudes, and bullying and harassment at work.<sup>127</sup>

**We recommend that the CRPD Committee asks:**

**33. What additional measures will the UK and devolved governments take to remove barriers to obtaining and maintaining employment for disabled people, including those with complex disabilities?**

### Pay gap

Disabled people are paid less on average than non-disabled people. Average pay for disabled people declined between 2010/11 to 2015/16 (at 2015/16 prices), in GB overall and in England and Wales individually.<sup>128</sup>

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<sup>123</sup> EHRC research in 2012 found that disabled people and employers were unclear about their rights and obligations with some employers regarding reasonable adjustments as discretionary: EHRC (2012) Working better: the perfect partnership – workplace solutions for disabled people and businesses, available [here](#). More recently the EHRC reported that a quarter of disability discrimination-related helpline enquiries concern failures to make reasonable adjustments in employment: EHRC (2016) response to the report of the House of Lords Select Committee on the Equality Act 2010 and disability, available [here](#) [accessed 4 January 2017].

<sup>124</sup> Disabled adults consider that appropriate support or adaptations, particularly opportunities for flexible working and reduced working hours would have helped them stay in work: Meager and Higgins (2011) Disability and Skills in a Changing Economy, available [here](#). A 2016 report concluded that the focus of support and existing programmes has been on those in work, rather than supporting work retention: Gardiner, L. and Gaffney, D. (2016) Retention Deficit: A New Approach to Boosting Employment for People with Health Problems and Disabilities, available [here](#) [accessed: 30 September 2016].

<sup>125</sup> Davidson, J. (2011) A qualitative study exploring employers' recruitment behaviour and decisions: small and medium enterprises, available [here](#) [accessed: 10 January 2017].

<sup>126</sup> There are concerns in relation to England and Wales:

England: In 2014/15, 90% of all apprenticeship were started by learners without any learning difficulty or disability. In contrast, 9% of apprenticeship starters were disabled learners (1% not known); an increase of 16% since 2013/14. SFA and BIS (2016) Statistical data set: FE data library: apprenticeships, available [here](#). Wales: In 2014/15, 98.6% of all apprenticeships were started by learners without any learning difficulty or disability. In contrast, 1.3% of apprenticeships were started by disabled learners. StatsWales (2016) Further education, work-based learning and community learning statistics: Unique learners in work-based learning provision by age group, gender and programme type, available [here](#). Estyn identified the barriers that prevent learners with disabilities from engaging in apprenticeship programmes, including lack of awareness of apprenticeships by parents, and employers and learners themselves. Estyn (2015) Breaking down barriers to apprenticeship October 2015, available [here](#) [accessed: 10 October 2016].

<sup>127</sup> Adams, L. and Oldfield, K. (2012) Opening Up: The Views of Disabled People and People with Long-term Health Conditions. EHRC. Research Report No. 77, available [here](#) [accessed: 30 September 2015]; and Coleman, N., Sykes, W. and Groom, C. (2013), 'Barriers to employment and unfair treatment at work: A quantitative analysis of disabled people's experiences'. EHRC, available [here](#) [accessed: 14 July 2016].

<sup>128</sup> Gross median hourly pay at 2015/16 prices decreased from £10.80 per hour to £9.90 per hour for disabled people between 2010/11 and 2015/16, but only from £11.50 per hour to £11.40 per hour for non-disabled people. See EHRC (forthcoming, 2017) Being disabled in Britain and associated data table EG2.2 [accessed: 1 February 2017].



The UK Government reports annually on the size of gender pay gaps and has introduced gender pay gap reporting from April 2017, but has taken no similar action on disability pay gaps.

**We recommend that the CRPD Committee asks:**

**34. What steps have the UK and devolved governments taken to close the pay gap between disabled and non-disabled employees?**

**35. What plans do the UK and devolved governments have to monitor the extent of the disability pay gap and extend pay gap reporting?**

## Access to justice (Articles 13, 12)

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### Legal aid

In England and Wales civil legal aid<sup>129</sup> is no longer available for most private family, housing, debt, welfare benefit, employment and clinical negligence matters as a result of changes under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).<sup>130</sup> <sup>131</sup> The number of grants of legal help for ‘new matter starts’ has fallen substantially.<sup>132</sup> The LASPO was introduced alongside other changes including a reduction

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<sup>129</sup> Legal aid is divided into Legal Help (advice and assistance) and Civil Representation (representation by solicitors and barristers).

<sup>130</sup> House of Commons Justice Select Committee (12 March 2015) Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, available [here](#) [accessed: 24 September 2016]. Evidence indicates that removing welfare benefits (with some exceptions), private family law cases (such as contact or divorce) and most housing cases from the scope of legal aid has had a negative impact on disabled people’s access to justice. For example:

- The UK Government has recognised that individuals bringing welfare benefit cases are more likely to report being disabled than the civil legal aid client base as a whole. Following the changes, the number of debt, employment and welfare benefits advice cases fell by over 99%.
- The reduction in legal aid support for private family law cases has reportedly had an impact on disabled people, because mental health conditions feature in a substantial minority of family disputes.
- The over-representation of disabled people in social housing compared with the adult population as a whole means they face a disproportionate impact from the exclusion of most housing cases. The Government’s equality impact assessment included statistics that showed potential adverse impacts on disabled people.

<sup>131</sup> Sometimes legal aid can be granted for cases outside of the scope of LASPO. This is known as exceptional case funding (ECF). It can be made available where necessary to avoid a breach of an individual’s Convention rights under the Human Rights Act (1998) or under enforceable EU rights. However, very few ECF applications are approved (5% were granted in the first year i.e. April 2013-March 2014). See: Ministry of Justice, Legal aid statistics: April to June 2016, available [here](#) [accessed: 10 October 2016]. This suggests that the application process is too demanding and the eligibility criteria too strictly interpreted. Furthermore, although the Government expected to receive 5,000-7,000 applications each year, only 1,300 on average are submitted.

See: Amnesty International (2016) Cuts that hurt: the impact of legal aid cuts in England on access to justice, available [here](#) [accessed: 10 December 2016].

<sup>132</sup> From over 134,486 grants from January to March 2013 (before the relevant provisions came in) to 41,428 grants in the next quarter (April-June 2013): Ministry of Justice, Legal Aid Statistics: October to December

in the fees paid to providers. Evidence indicates that the changes are having a negative impact on disabled people's right to access justice.<sup>133</sup>

**We recommend that the CRPD Committee asks:**

**36. In relation to England and Wales, can the UK Government explain how it is monitoring the impact of reforms introduced by the LASPO on access to justice for disabled people? How will any adverse impacts identified be mitigated?**

**Access to advice**

In England and Wales, changes<sup>134</sup> have left so-called 'advice deserts' in some areas.<sup>135</sup>

**We recommend that the CRPD Committee asks:**

**37. In relation to England and Wales, can the UK Government explain how it will review the impact of budget reductions and recent legal aid reforms on the availability of legal advice from non-government organisations, and how it will address the problem of 'advice deserts'?**

**Court and Employment Tribunal fees**

Following the introduction of fees for Employment Tribunals in GB,<sup>136</sup> the number of applications, including disability discrimination claims, has dropped significantly.<sup>137</sup>

Available evidence strongly suggests that the cost of pursuing a case is stopping people from bringing claims.<sup>138 139</sup>

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2015, available [here](#). This trend has continued, with less than 38,099 grants between April and June 2016: Ministry of Justice, Legal aid statistics: April to June 2016, available [here](#) [accessed: 10 October 2016].

<sup>133</sup> EHRC (2015) Equality, human rights and access to civil law justice: a literature review, available [here](#); Amnesty International (2016) Cuts that hurt: the impact of legal aid cuts in England on access to justice, available [here](#) [accessed: 10 December 2016]. Also, see the supplementary England report.

<sup>134</sup> Including legal aid changes, freezes to legal aid rates and increased administrative controls, which have led many law firms to stop doing legal aid work.

<sup>135</sup> The Law Society (27 July 2016) Lack of housing legal aid services is leading to nationwide advice deserts (press release), available [here](#) [accessed: 16 August 2016].

<sup>136</sup> In Scotland, Employment Tribunals are being devolved to the Scottish Courts and Tribunal Service and the Scottish Government has committed to abolishing fees. See: Scottish Government (2015) A Stronger Scotland: The Government's Programme for Scotland 2015-16, available [here](#) [accessed: 15 August 2016].

<sup>137</sup> 63% reduction in disability discrimination complaints since 2013: MOJ (2016) Tribunals and gender recognition statistics, available [here](#) [accessed: 15 August 2016].

<sup>138</sup> E.g. Citizens Advice Bureau (2014) One year on from the introduction of fees to access the Employment Tribunal, available [here](#) and TUC (2014) At what price justice? The impact of Employment Tribunal fees, available [here](#) [accessed: 15 August 2016].

<sup>139</sup> Evidence suggests that fees also serve as a barrier to early conciliation because there is no incentive for employers to settle in cases where the claimant may not be able to afford the fee: House of Commons Justice

The UK Government argued that disabled people<sup>140</sup> are more likely to fall into the lower income brackets, and therefore qualify for partial or full fee remissions.<sup>141</sup> However, the complex nature of the remission system can also serve as a barrier.<sup>142</sup>

**We recommend that the CRPD Committee asks:**

**38. Following the post-implementation review of Employment Tribunal fees, how will the UK Government address or mitigate any disproportionate impacts on disabled people?**

**Awareness of CRPD and reasonable accommodations**

There does not appear to be compulsory training for members of the judiciary on the UNCRPD or forms of reasonable accommodation to ensure equal access to justice.

The Northern Ireland Court of Appeal found that the Northern Ireland Employment Tribunal failed to make adjustments to its procedures which may be required to accommodate the needs of disabled people.<sup>143</sup>

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Committee (June 2016) Courts and tribunals fees Second Report of Session 2016-17, available [here](#). 47% of respondents to a survey said they would need to save all their discretionary income for six months to afford the fee for a discrimination claim: Citizens Advice Bureau (2014) One year on from the introduction of fees to access the Employment Tribunal, available [here](#) [accessed: 15 August 2016].

<sup>140</sup> Along with ethnic minorities, women and young people.

<sup>141</sup> Because they are more likely to fall into the lower income brackets. See: Ministry of Justice (2012) Charging fees in Employment Tribunals and the Employment Appeal Tribunal: Government Response (including Equality Impact Assessment), available [here](#) [accessed: 15 August 2016].

<sup>142</sup> Trott (2012) Are tribunal and EAT fees a price worth paying? in IDS Employment Law Brief, Vol. 947, available [here](#) [accessed: 15 August 2016].

<sup>143</sup> *Gallo v Bombardier Aerospace UK* [2016] NICA 25, para. 61, Tribunal, see [here](#). The Northern Ireland Court of Appeal found that the applicant did not receive a fair procedural hearing. It noted that the Tribunal did not have regard to the Equality Treatment Benchbook (ETBB), and failed to take properly into account his disability: 'it is a matter of great concern that no reference appears to have been made to the ETBB by the [Industrial Tribunal]...We have formed the clear impression that the ETBB does not appear to be part of the culture of these hearings'. The ETBB, which was published by the Judicial College in England and Wales, inter alia sets out adjustments to court or trial procedures which may be required to accommodate the needs of persons with disabilities.

**We recommend that the CRPD Committee asks:**

- 39. Can the UK Government, and devolved governments where relevant, outline the extent to which members of the judiciary are required to have training on the UNCRPD, and on reasonable accommodations for ensuring equal access to justice?**
- 40. What efforts have the Northern Ireland Executive made to ensure courts and Tribunals in Northern Ireland are aware of and adhere to guidance for ensuring disabled people have equal access to justice?**

**Disability discrimination in schools**

Education tribunals in the UK<sup>144</sup> are not able to award financial compensation for disability discrimination or harassment, whereas financial compensation can be awarded for other forms of discrimination in the provision of school education which are dealt with in the civil courts.<sup>145</sup>

**We recommend that the CRPD Committee asks:**

- 41. What steps has the UK Government taken to ensure equal treatment of disabled children seeking redress against discrimination or harassment in schools with regard to access to compensation and injunctive relief?**

## Education (Articles 24, 7)

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**Inclusive education**

While the UK Government recently stated its commitment to inclusive education,<sup>146</sup> it has retained an interpretative declaration and reservation to Article 24,<sup>147</sup> and its Initial Report<sup>148</sup> suggests an acceptance of a fixed and permanent role for separate special schools.<sup>149</sup>

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<sup>144</sup> Disability discrimination in the provision of school education cases go to the Special Educational Needs Tribunal in England, Wales and Northern Ireland and the Additional Support Needs Tribunal in Scotland.

<sup>145</sup> The County Court in England and Wales is empowered to award all remedies available in the High Court including damages for any loss and compensation for injury to feelings. The Sheriff Court in Scotland has the power to make any order which could be granted by the Court of Session, including compensation for injury to feelings.

<sup>146</sup> It stated that 'it is committed to inclusive education of children with disabilities and young people and the progressive removal or barriers to learning and participation in mainstream education.' See: Department for Education, Special Educational Needs and Disability Code of Practice 0-25 years, 2015, available [here](#) [accessed: 15 August 2016].

Research from 2014<sup>150</sup> shows a slight reverse in the 30-year trend towards the inclusion of disabled children in mainstream schools in England.

**We recommend that the CRPD Committee asks:**

**42. In the light of General Comment No. 4, can the UK and devolved governments confirm their position in relation to inclusive education, provide information on progress towards inclusive education and explain how they will ensure the education system at all levels is inclusive?**

### **Nursery and pre-school provision**

In Northern Ireland, nursery and pre-school provision for children in special schools was to be reduced from 4.5 hours per day to 2.5 hours from September 2016.<sup>151</sup> In response to concerns,<sup>152</sup> the proposed reduction has been suspended pending a review.<sup>153</sup>

**We recommend that the CRPD Committee asks:**

**43. Can the Northern Ireland Executive provide an update on the review of the proposed reduction in the hours of nursery and pre-school provision for disabled children in Northern Ireland?**

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<sup>147</sup> Which emphasises that ‘the General Education System in the UK includes mainstream and special schools, which the UK Government understands is allowed under the Convention’. See: Convention on the Rights of Persons with Disabilities, Status as at 17-07-2015, [here](#) [accessed: 15 August 2016].

<sup>148</sup> ODI (2011) UK Initial Report on the UNCPRD, available [here](#) [accessed: 15 August 2016].

<sup>149</sup> For instance, there is no explanation of how the role of special schools is diminishing over time as mainstream schools become progressively more inclusive, including through the increased co-location of specialist and mainstream provision.

<sup>150</sup> CSIE (2014) Contrasting responses to diversity: school placement trends 2007-2013 for all local authorities in England, available [here](#) [accessed: 15 August 2016]. The report presents school placement trends (i.e. the proportion of children placed in special schools or other separate sections) for all local authorities in England for the years 2007 to 2013. See the England supplementary report for more information.

<sup>151</sup> BBC news (8 March 2016) ‘Special needs: Nursery hours for children to be cut’ (news article) available [here](#); Irish News (8 March 2016) ‘Education authority to review special needs pre-school cuts’ (news article), available [here](#). BBC news (16 March 2016) ‘Special needs: Proposed nursery hours cut suspended’ (news article), available [here](#). BBC news (15 June 2016) ‘Special school: Education Authority apologises to parents over plans to cut hours’ (news article), available [here](#) [accessed 24 September 2016].

<sup>152</sup> These include: (i) A limited time to deliver any planned education activities after a pupils ‘medical and complex needs’ and other needs including ‘nappy changes’ are addressed; (ii) Less time to help children exhibiting ‘severe to challenging behaviour’; (iii) No time to help children learn feeding skills, as under the new model ‘children are unable to stay for lunch’; (iv) Restricting delivery of speech and language therapy, physiotherapy and occupational therapy to children.

<sup>153</sup> BBC News (3 June 2016) ‘Education Authority “misled Stormont committee” over pre-school provision’ (news article), available [here](#) [accessed 24 September 2016].

## School exclusions

Across GB, despite guidance in place,<sup>154</sup> permanent and/or temporary exclusion rates from school were higher for pupils with special educational needs (SEN)/additional support needs (ASN) than for other children,<sup>155</sup> damaging their future prospects.<sup>156</sup>

UKIM is concerned by recent case law confirming that certain disabled children are not protected by the Equality Act 2010 in relation to school exclusions.<sup>157 158</sup>

### We recommend that the CRPD Committee asks:

#### 44. Can the UK and devolved governments provide information about measures taken to identify and reduce exclusion of disabled pupils and explain how progress is monitored?

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<sup>154</sup> England: Department for Education (2012) Exclusion from maintained schools, academies and pupil referral units in England, available [here](#) [accessed: 15 August 2016].

Wales: Welsh Government (2015) Exclusion from Schools and Pupils Referral Units, available [here](#) [accessed: 15 August 2016].

Scotland: A national working group was established in 2014 to update the Scottish Government's (2011) previous guidance on managing school exclusions.

<sup>155</sup> England: The exclusion rate decreased for pupils with special educational needs (SEN) between 2010/11 (135.2 exclusions per thousand) and 2014/15 (130.8 per thousand), reflecting an overall decrease across all pupils. The exclusion rate for pupils with no identified SEN increased during this time (from 19.4 per thousand to 22.9 per thousand). This led to a narrowing of the gap between pupils with SEN and those with no identified SEN, but the exclusion rate in 2014/15 for pupils with SEN remained more than 5 times higher compared to pupils with no identified SEN.

Wales: the rate for both pupils with SEN and those with no identified SEN decreased between 2011/12 and 2014/15. Pupils with SEN saw a greater decrease (from 90.9 per thousand to 83.8 per thousand) which led to a narrowing of the gap between pupils with SEN and those with no identified SEN. Despite this, the exclusion rate in 2014/15 for pupils with SEN remained around seven times as high as pupils with no identified SEN (12.0 per thousand).

Scotland: the exclusion rate for pupils with ASN and without ASN decreased between 2009/10 and 2014/15. Pupils with ASN saw a greater decrease (from 174.3 per thousand to 69.0 per thousand) which led to a narrowing of the gap between pupils with any ASN and those with no ASN. However, the exclusion rate in 2014/15 for pupils with ASN remained more than four times higher than for those with no ASN (16.1 per thousand).

Note that rates for the three GB countries are not comparable. For further details see: EHRC (forthcoming, 2017) Being disabled in Britain and associated data table CE2.10.

<sup>156</sup> Shaw et al (February 2016) Special educational needs and their links to poverty, available [here](#).

<sup>157</sup> In *X v Governors of a School [2015]* the Upper Tribunal decided that it was not discriminatory for a school to exclude a six year old child because of her tendency to physically abuse others. It confirmed that such a tendency is excluded from the definition of disability under the Equality Act 2010 (see Regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010) even if it arises as a result of a disability such as autism, and regardless of whether the person concerned is an adult or a child. UKIM is concerned about this exclusion and that it may have a negative impact on disabled children if reflected in the DfE's Mental Health and Behaviour in Schools guidance due in March 2017.

<sup>158</sup> This concern was also raised in: House of Lords Select Committee on the Equality Act 2010 and Disability, The Impact of the Equality Act 2010 on Disability, March 2016, available [here](#) [accessed: 5 August 2016].

## Transition from school

Across the UK, evidence indicates that disabled young people face significant barriers to transitioning from school to further education or employment, and disabled 16-18 year olds are more likely to be not in education, employment or training (NEET).<sup>159</sup>

**We recommend that the CRPD Committee asks:**

**45. Can the UK and devolved governments explain what measures have been taken to improve the process of transition from school to further education and employment for disabled young people?**

## Disabled Students' Allowance

The UK Government confirmed it would reduce the support offered to English disabled students through the Disabled Students' Allowance (DSA).<sup>160</sup> From 2016/17, higher education institutions will bear the majority of reasonable adjustment costs.<sup>161 162</sup> Disabled recipients from low income households could be disproportionately affected.<sup>163</sup>

**We recommend that the CRPD Committee asks:**

**46. How is the UK Government minimising the impact of changes to Disabled Students' Allowance for English disabled students, particularly on disabled young people from low income households?**

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<sup>159</sup> In 2015/16, a greater proportion of disabled 16-18 year olds were NEET compared with non-disabled in GB (13.2% cf. 5.8%), England (12.6% cf. 5.7%), Wales (17.9% cf. 6.7%) and Scotland (17.2% cf. 6.9%). A high percentage of disabled people with mental health conditions were NEET in 2015/16: in GB (20.3%), England (18.9%), Wales (27.7%), and Scotland (28.8%) compared with non-disabled people. See EHRC (forthcoming, 2017) Being disabled in Britain and associated data table CE1.7 [accessed: 1 February 2017].

In Northern Ireland, research suggests that the process of transition from school to further education or employment and from child to adult health and social care services is often inadequate. See: Regulation Quality and Improvement Authority (2013) A Baseline Assessment and Review of Community Services for Adults with a Learning Disability, p. 36, available [here](#) [accessed: 15 August 2016].

<sup>160</sup> BIS (2015), 'Consultation on targeting funding for disabled students in higher education from 2016/17 onwards', available [here](#). See also: Department for Business, Innovation and Skills (12 September 2014), Written Statement to Parliament, Higher education: student support – changes to Disabled Students' Allowances (DSA), available [here](#) [accessed: 15 August 2016].

<sup>161</sup> Including most non-medical support provisions, and the additional costs of specialist accommodation other than in exceptional circumstances.

<sup>162</sup> Parliament (2015) 'Disabled Students' Allowances: written statement – HCWS347', available [here](#).

<sup>163</sup> Indicated by the UK Government's equality analysis: Department for Business, Innovation and Skills (2015) Disabled Students' Allowances Consultation: Equality Analysis, available [here](#) [accessed: 15 August 2016].

## Additional support for learning

In Scotland, if a child wants to appeal the level of additional support for learning (ASL)<sup>164</sup> provided by their LA they must first go through capacity and well-being assessments.<sup>165</sup> The outcomes determine whether a child can appeal and will affect the presumption of capacity in future years. This contrasts with the presumption of legal capacity from age 12 in Scots law.<sup>166</sup> The LA will normally perform both assessments, creating a conflict of interest.

**We recommend that the CRPD Committee asks:**

### **47. Can the Scottish Government explain:**

- **why it has changed the presumption of legal capacity from the age of 12 in relation to additional support for learning?**
- **what support is provided to disabled children to exercise their legal capacity as required by Article 12 CRPD?**

## Educational attainment

Across the UK, fewer children with special educational needs (SEN)/additional support needs (ASN) achieve good results in Key Stage 4 or on leaving school than those pupils without SEN/ASN.<sup>167</sup>

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<sup>164</sup> Around a quarter of all children with additional support needs (ASN) are assessed or declared as disabled. In 2015, 24% of all children with additional support needs were assessed or declared as disabled: Scottish Government (2015) Summary Statistics for Schools in Scotland, available [here](#) [accessed: 15 August 2016].

<sup>165</sup> In 2016, 9.5% of pupils with ASL were assessed or declared as disabled. Scottish Government, High Level Summary of Statistics Trend December 2016 ASL update, available [here](#) [accessed: 15 August 2016].

<sup>166</sup> Age of Legal Capacity (Scotland) Act 1991.

<sup>167</sup> England: In 2014/15 the overall proportion of children with SEN who achieved at least 5 A\*-C GCSEs, including English and Mathematics, at the end of Key Stage 4 was 20.0%, compared with 64.2% for children without SEN.

Wales: In 2014/15 the overall proportion of children with SEN aged 15 at the start of the academic year who achieved at least 5 A\*-C GCSEs, including English or Welsh First Language and Mathematics, was 23.3%, compared with 69.5% for children without SEN.

Scotland: In 2014/15 the overall proportion of children with ASN who achieved at least 1 Award at SCQF level 5 or better by the time they left school was 60.7%, compared with 90.3% for children without ASN: EHRC (forthcoming, 2017) Being disabled in Britain and associated data table CE1.5 [accessed: 5 January 2017].

Northern Ireland: research found that students with SEN or a disability have lower attainment levels than students without any SEN or disability and are less likely to go on to higher education. The lower attainment of students with SEN or a disability is a persistent inequality. Burns et al (March 2015) Education inequalities in Northern Ireland, available [here](#) [accessed: 15 August 2016].



**We recommend that the CRPD Committee asks:**

**48. What steps have the UK and devolved governments taken to close the educational attainment gap for disabled pupils?**

## Health and life (Articles 25, 10)

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### Health inequalities

Disabled people, particularly those with learning disabilities, are more likely to experience health inequalities<sup>168</sup> and major health problems and are likely to die younger than other people.<sup>169</sup> People with learning disabilities are also one of the groups least likely to access palliative care.<sup>170</sup>

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<sup>168</sup> England: In 2014, 28.2% of disabled adults reported their current health status as bad or very bad, compared with 0.9% of non-disabled adults and for adults with an impairment affecting learning, understanding or concentrating the figure was higher at 40%.

Scotland: Combining data from 2013 and 2014, 25.1% of adults described their current health as bad or very bad, compared with 0.5% of non-disabled adults.

Wales: Combining data from 2013 and 2014, 17.0% of adults described their current health as bad, compared with 0.4% of non-disabled adults.

See EHRC (forthcoming, 2017) Being disabled in Britain and associated data table EB2.1.

<sup>169</sup> UK/GB: The life chances of people with mental health problems are greatly reduced compared with the general population. On average, men with mental health problems die 20 years earlier, and women die 15 years earlier, than the general population; the majority of deaths in this group arise from preventable causes and could have been avoided by timely medical intervention: BMA (2014) Recognising the importance of physical health in mental health and intellectual disability: Achieving parity of outcomes, available [here](#) [accessed: 15 September 2015].

England: Research found that, on average, learning disabled men and women died 13 years and 20 years earlier, respectively, than men and women in the general population. In total 22% of learning disabled people were under 50 years old when they died. Contributing factors included delays in diagnosis, investigation and specialist referral, fragmented care and lack of reasonable adjustments to facilitate healthcare. Norah Fry Research Centre (2013) Confidential Inquiry into premature deaths of people with learning disabilities, available [here](#). See also: Heslop P. et al (2013) Confidential Inquiry into Premature Deaths of People with Learning Disabilities (CIPOLD). Final report, available [here](#) [accessed: 15 September 2015].

Scotland: Scottish Government (2012) Mental Health Strategy for Scotland, available [here](#).

Northern Ireland: Department of Health, Social Services and Public Safety (2012): Fit and Well – Changing Lives – A Ten Year Public Health Strategic Framework for Northern Ireland 2012-2022. A Consultation Document, p. 48, available [here](#). See also: Black (2013) 'Health inequalities and people with a learning disability', available [here](#) [accessed: 15 August 2016].

<sup>170</sup> England: people with learning disabilities, mental health problems and dementia often experience late recognition of terminal illness and late, if any, access to palliative care: Care Quality Commission (2016) A Different Ending: Addressing inequalities in end of life care, available [here](#) [accessed: 15 August 2016].

Scotland: A recent inquiry found that people with learning disabilities are one of the marginalised groups least likely to access palliative care: Health and Sport Committee (2015) We need to talk about palliative care, available [here](#) [accessed: 15 August 2016].

**We recommend that the CRPD Committee asks:**

**49. How are the UK and devolved governments addressing health inequalities, including inequality in life expectancy and end of life care, for disabled people, particularly people with learning disabilities and mental health conditions?**

**Access to, quality of, and outcomes from, mental healthcare services**

Across the UK, mental health services have experienced underfunding<sup>171</sup> and people with mental health conditions often experience protracted waits for treatment.<sup>172</sup> For those who do access services, a range of needs remain unmet.<sup>173</sup> The Committee on the Rights of the Child made a series of relevant recommendations.<sup>174</sup>

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<sup>171</sup> England: a government-sponsored Independent Mental Health Taskforce concluded in 2016 that mental health hasn't been given equal priority to physical health, resulting in underfunding and insufficient qualified staff, contributing to three-quarters of people with mental health problems receiving no or inadequate support from health services. Mental Health Taskforce to the NHS in England (February 2016) *The Five Year Forward View For Mental Health*, available [here](#) [accessed: 15 August 2016].

Scotland: Data from NHS Scotland shows that expenditure on psychiatric services has remained fairly constant since 2008. However, NHS employees have reported experiencing cuts to funding for specific services, resulting in closure of some services or services operating with reduced funding meaning cuts to staff and limitations to the number of people supported. See Mental Health Foundation, VOX Scotland and Scottish Government (2016) *A Review of Mental Health Services in Scotland: Perspectives and Experiences of Service Users, Carers and Professionals* available [here](#) [accessed: 15 August 2016].

Northern Ireland: a 2015 report found that, between 2008 and 2014, actual spend on mental health services by Health & Social Care Trusts was around 25% less than had been projected. See Wilson et al (2015): *Regress? React? Resolve?: An evaluation of mental health service provision in Northern Ireland*, available [here](#); Commission on Acute Adult Psychiatric Care (June 2016) 'Building on progress: achieving parity for mental health in Northern Ireland – Final Report', p. 64, available [here](#) [accessed: 15 August 2016].

<sup>172</sup> England: Only a quarter of all those with mental ill-health are receiving treatment, compared with the vast majority of those with physical health problems. See: Centre for Economic Performance (2012) *How mental illness loses out in the NHS*, available [here](#) [accessed: 15 September 2015].

There are particular delays in accessing psychological therapies and child and adolescent mental health services. See: England: Mental Health Taskforce to the NHS in England (February 2016) *The Five Year Forward View For Mental Health*, available [here](#) [accessed: 15 August 2016].

Scotland: Despite the introduction of a waiting times target in 2010 to ensure that by 2014 a person could access psychological therapies within 18 weeks, the majority of Health Boards in Scotland failed to meet this target. See SAMH (2016) *Talking it Out: Psychological Therapies in Scotland*, available [here](#). The Scottish Government set a standard for the NHS in Scotland to deliver a maximum wait of 18 weeks to start treatment from December 2014. This standard is only being met for 84.2% of patients. See Child and Adolescent Mental Health Services, *Waiting Times in NHS Scotland*, 7 June 2016, available [here](#) [accessed: 15 August 2016].

<sup>173</sup> England: only 14% of people surveyed felt the care they received was the right response to their needs and helped resolve their crisis; many services were failing to meet people's needs and lacked basic respect, warmth and compassion; and wide variations in the help, care and support available, depending on where a person in crisis lived, and on what part of the system they came into contact with. Care Quality Commission, (June 2015) *Right here, right now: People's experiences of help, care and support during a mental health crisis*, available [here](#) [accessed: 15 August 2016].

Scotland: evidence has found a 'range of unmet needs' in Intensive Psychiatric Care Units. These include a lack of activities, rehabilitation or a therapeutic environment; a 'one size fits all' approach to risk management and a lack of opportunities for meaningful involvement in the care process. NHS Quality Improvement Service (2010) *'Intensive Psychiatric Care Units: overview report'* [accessed: 15 August 2016].

<sup>174</sup> Committee on the Rights of the Child (July 2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, available [here](#) [accessed: 15 August 2016].

**We recommend that the CRPD Committee asks:**

**50. How are the UK and devolved governments:**

- **ensuring sufficiently funded and appropriate mental health services that enable people to reach the highest attainable standard of mental health?**
- **responding to the 2016 Concluding Observations of the Committee on the Rights of the Child relating to mental health data and services (para 61)?**

Northern Ireland has had the highest suicide rate in the UK since 2012.<sup>175</sup> There was an increase in the number and rate of suicides in 2004-2013, and evidence indicates a gap in early intervention services.<sup>176</sup> A draft suicide prevention strategy emphasizes the need for early intervention and acknowledges the impact of the conflict in Northern Ireland on mental health.<sup>177</sup>

**We recommend that the CRPD Committee asks:**

**51. How has the Northern Ireland Executive sought to address high rates of suicide and reduce levels of mental ill-health in Northern Ireland, particularly among those affected by the conflict?**

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<sup>175</sup> In 2014, there were 16.5 suicides per 100,000 population in NI, followed by Scotland (14.5 deaths per 100,000), England (10.3 deaths per 100,000) and Wales (9.2 deaths per 100,000). However the number of suicides in Northern Ireland decreased from 303 deaths in 2013 to 268 deaths in 2014. See: Office for National Statistics Suicides in the UK: 2014 Registrations, available [here](#) [accessed: 6 August 2016].

One factor which is broadly accepted to have contributed to the prevalence of mental health problems amongst the general population in Northern Ireland is the history of violent conflict. See: Oral Statement by Chief Constable of the PSNI to the Northern Ireland Affairs Committee of the House of Commons; Hansard Script 24 January 2012 HC 877-I; Bamford Centre for Health & Wellbeing, the Northern Ireland Centre for Trauma & Transformation and Compass (2011) 'Troubled consequences: A report on the mental health impact of the civil conflict in Northern Ireland', available [here](#) [accessed: 6 August 2016].

A revised suicide prevention strategy is currently the subject of a public consultation exercise. Department of Health (September 2016): 'Protect Life 2: a draft strategy for suicide prevention in the north of Ireland', available [here](#) [accessed 6 August 2016]. In the interim, the Department continued to work to the previous strategy. See: Committee for Health Social Services and Public Safety (2 March 2016) Protect Life Strategy: DHSSPS and Public Health Agency: Official Report, available [here](#) [accessed: 15 August 2016].

<sup>176</sup> Healthcare Quality Improvement Partnership (October 2016) National Confidential Inquiry into Suicide and Homicide by People with Mental Illness: Annual Report and 20-year Review, p. 45, available [here](#) [accessed: 10 December 2016].

<sup>177</sup> Department of Health NI (September 2016) 'Protect Life 2 – A Strategy for Suicide Prevention in the north of Ireland', available [here](#) [accessed: 10 October 2016]. The draft strategy was consulted upon in 2016.

## **Inappropriate or long-term placement of children and adults with learning disabilities and/or autism**

Many people with a learning disability or autism are placed in psychiatric hospitals inappropriately and are likely to have longer stays in hospital than other mental health patients.<sup>178</sup> Contributing factors are a lack of funding, accommodation or an appropriate care provider in the community, often exacerbated for those with complex needs.<sup>179 180</sup>

### **We recommend that the CRPD Committee asks:**

#### **52. How do the UK and devolved governments ensure that there are adequate community services for those with a learning disability and/or autism, who otherwise could be placed in psychiatric hospitals, Assessment and Treatment Units or general acute wards?**

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<sup>178</sup> England: despite a commitment from the UK Government to move most people with a learning disability out of psychiatric hospitals and into community-based support following a serious case review (see: Department of Health (2012) Transforming care: A national response to Winterbourne View Hospital, Final Report, available [here](#)), there were 2,650 people with learning disabilities and/or autism receiving inpatient care in psychiatric hospitals, 895 of whom had been inpatients for over five years (Learning Disability Statistics – Annual Overview, England 2015-2016, NHS Digital 2016, available [here](#)). For a recent review of care and support for children and young people with complex needs involving mental health, learning disabilities and/or autism, see Lenehan (January 2017). These are our children: a review by Dame Lenehan, available [here](#) [accessed: 3 February 2017].

Wales: there were 117 resident patients with a learning disability in mental health hospitals and units in 2016 and 74 patients (63%) had been resident for two years or more. See: Welsh Government (2016) 'Measuring the health and wellbeing of a nation. Public Health Outcomes Framework for Wales, available [here](#).

Scotland: people with learning disability or disabled people with autism experienced delays in accessing appropriate community services and were likely to have longer stays in hospital than other mental health patients. See: MWC, 2016. Visit and monitoring report. No through road: People with learning disabilities in hospital, available [here](#). In Scotland, the average (median) number of days since admission for patients with a Learning Disability was 759 days (around 2 years and one month). This compares with 129 days (around 4 months) for non-Learning Disability patients. The Mental Health and Learning Disability Inpatient Bed Census, was carried out by the Scottish Government and NHS Boards as at midnight, 31 March 2016. See [here](#).

Northern Ireland: The Department of Health Social Services and Public Safety (2011) Transforming Your Care: A Review of Health and Social Care in Northern Ireland, available [here](#), set out models to provide services for acutely ill people at home and in the community rather than in psychiatric hospitals. However the success of these models in reducing the number of long-term detention in psychiatric hospitals is questionable.

<sup>179</sup> Transforming Care and Commissioning Steering Group (2014) Winterbourne View – time for change: Transforming the commissioning of services for people with learning disabilities and/or autism, available [here](#) [accessed: 25 January 2017]; House of Commons Committee of Public Accounts (2015) Care services for people with learning disabilities and challenging behaviour. Fifty-first Report of Session 2014-15, available [here](#) [accessed: 25 January 2017]; MWC (2016) No through road: people with learning disabilities in hospital, available [here](#); Investigation into the death of Ms MN, MWC, January 2016, Summary report, available [here](#).

<sup>180</sup> The EHRC and Children's Commissioner have highlighted these issues to the Minister of State for Health. See letter from the EHRC and Children's Commissioner (10 August 2016) Children and young people with autism, a learning disability and a mental health condition in long-term detention, unpublished.

## Inappropriate use of ‘Do Not Resuscitate’ orders

Across the UK, there is evidence of ‘Do Not Resuscitate’ orders<sup>181</sup> being inappropriately applied to disabled people by medical professionals who have made negatively subjective ‘quality of life’ judgements without consulting the disabled person and/or their carers.<sup>182 183</sup>

**We recommend that the CRPD Committee asks:**

**53. How do the UK and devolved governments ensure that ‘Do Not Resuscitate’ orders are not inappropriately placed on disabled people in violation of their CRPD rights?**

## Freedom from exploitation, violence and abuse (Articles 16, 6)

### Disability-motivated hate crime, hostility and harassment

Despite some positive initiatives,<sup>184</sup> disability hate crime persists, and is under-reported throughout the UK.<sup>185</sup>

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<sup>181</sup> Hospitals and other care providers have a duty to take steps to protect the lives of people for whom they provide care under Article 2 and Article 8 of the European Convention on Human Rights. This includes not placing do not attempt resuscitation (DNAR) notices on patients’ files without the person’s consent or knowledge. See Care Quality Commission (2014) Monitoring the use of the Mental Capacity Act Deprivation of Liberty Safeguards in 2012/13, available [here](#) [accessed: 1 May 2015].

<sup>182</sup> England: research found cases of orders being inappropriately placed on people with learning disabilities. Mencap (2012) Death by indifference: 74 deaths and counting, A progress report five years on, available [here](#). In Scotland, the Scottish Public Services Ombudsman (SPSO) report for May 2016 highlighted four complaints/investigations into the application of do not attempt cardiopulmonary resuscitation (DNACPR) orders, available [here](#). For a list of decisions relating to complaints about the application of DNACPR from 2013-2016 see [here](#) [accessed: 10 October 2016].

<sup>183</sup> The EHRC successfully intervened in a legal case that clarified that at risk people in hospital and their families have the right to be consulted about any proposal to place a ‘Do Not Resuscitate Notice’ in their notes. In the specific case, the hospital failed to do so and the court found them to have breached Article 8 of the European Convention of Human Rights (*R (Tracey) v Cambridge University Hospitals NHS Foundation Trust and Secretary of State for Health [2014]*.) The EHRC also welcomes the landmark 2015 High Court judgment that a decision to impose a ‘Do not resuscitate’ order on a 28-year-old man with cerebral palsy, without the knowledge of his family, was a violation of his ECHR Article 8 rights (*Elaine Winspear (Personally and on behalf of the estate of Carl Winspear (Deceased) v City Hospitals Sunderland NHS Foundation Trust*), available [here](#) [accessed: 10 October 2016].

<sup>184</sup> England/Wales: A new hate crime action plan was published in July 2016 by the UK Government. It evidences some progress, but notes the need for continued improvement in police recoding practices, and improved police response and victim support. The action plan does not cover actions in Scotland and Northern Ireland but intends to work with devolved governments to ensure that best practice is shared across the UK. See: Home Office (2016) Action against Hate: The UK Government’s plan for tackling hate crime, available [here](#) [accessed: 19 August 2016].

Scotland: The Scottish Government’s Draft Delivery Plan 2016-2020 relating to CRPD makes a commitment to encourage hate crime reporting through awareness-raising: Scottish Government (2015) The Scottish Government’s Draft Delivery Plan 2016-2020, Consultation, available [here](#) [accessed: 19 August 2016].

**We recommend that the CRPD Committee asks:**

**54. What steps are the UK and devolved governments taking to address under-reporting of disability-motivated hate crime and harassment, and to ensure prosecution of all incidents of disability-related hate crime?**

**Bullying in schools<sup>186</sup>**

Despite initiatives,<sup>187</sup> 40% of children and young people with no disability reported being bullied in a 2015 survey, compared to: 58% with a physical disability, 62% with a learning disability, and 67% with Autism/Asperger's.<sup>188</sup> No government department collects regular data.<sup>189</sup>

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<sup>185</sup> The EHRC's 2011 inquiry into disability-related harassment found that it is a widespread but under-reported problem which has a significant impact on the day to day lives of disabled people. See EHRC (forthcoming, 2017) Being disabled in Britain.

England/Wales: Despite efforts to increase reporting, the number of reports of disability hate crime to the police remain significantly lower than the estimated number of incidents of disability hate crime: Crime Survey for England and Wales, available [here](#); Coleman et al (2016) Crime and disabled people: Measures of disability-related harassment, 2016 update, available [here](#) [accessed: 10 October 2016].

Scotland: Police Scotland have recognised that this crime continues to be under-reported: Crown Office and Procurator Fiscal Service (2016), 'Hate Crime in Scotland 2015-16', available [here](#) [accessed: 14 July 2016]. Northern Ireland: there is broad consensus that there is significant under-reporting, e.g. see BBC News (15 September 2014) Campaign to highlight disability hate crime in Northern Ireland (news article), available [here](#) [accessed: 10 October 2016].

<sup>186</sup> Bullying can greatly impact on pupils' wellbeing and attendance and thus their educational attainment: The Children's Society (2015), The Good Childhood Report 2015, available [here](#) [accessed: 5 August 2016].

<sup>187</sup> England: Under the Education and Inspections Act 2006, schools in England have a statutory duty to prevent all forms of bullying among pupils. The UK Government provided over £4 million to anti-bullying organisations to help schools develop strategies to tackle bullying, including pupils with SEN. See: DfE and Edward Timpson MP (2014) Press release: Department for Education and WVE urge pupils to banish bullying, available [here](#) [accessed: 23 January 2017].

Wales: In 2011, the Welsh Government published a series of anti-bullying guidance which included bullying around special educational needs and disabilities. See: Welsh Government (2011), Respecting others: anti-bullying overview, available [here](#) [accessed: 6 October 2016]. The Welsh Government also established the All Wales Anti-Bullying Leadership Group to provide a strategic approach to tackling bullying and hate crime in schools and the wider community. National Assembly for Wales Children, Young People and Education Committee (2015), Letter from the Minister for Education and Skills – Progress report to the Committee report: Inquiry into attendance and behaviour, 14/01/2015, CYPE (4)-01-15 – Paper to note 7, available [here](#) [accessed: 23 January 2017].

Scotland: The Scottish Government continues to fund and support Respectme, Scotland's anti-bullying service. The Scottish Advisory Group on Relationships and Behaviour in Schools provides advice at a local and national level on behaviour and relationships in schools. Education Scotland provides support and resources to develop anti-bullying strategies.

<sup>188</sup> Survey of 4,853 young people aged 13-20. Ditch the Label (2015), 'The annual bullying survey 2015', available [here](#) [accessed: 18 August 2015]. Although designed as a UK survey, most of the respondents were from England, with 8% from Scotland and an even smaller proportion from Wales and Northern Ireland.

<sup>189</sup> Evidence on bullying in the UK is relatively sparse, with available evidence limited largely to surveys by a variety of organisations, or in Scotland to data collected inconsistently by different local authorities: EHRC (2015) Prejudice-based bullying in Scottish schools, available [here](#) [accessed: 23 January 2017].

**We recommend that the CRPD Committee asks:**

**55. Can the UK and devolved governments provide evidence on the extent of bullying of disabled pupils, the steps being taken to address it, and how progress is monitored?**

**Violence against disabled women**

Disabled women experience disproportionate levels of all forms of violence and abuse from carers/partners/in the community, and face additional barriers to accessing appropriate support.<sup>190 191</sup> Insufficient funding is a major barrier.<sup>192</sup>

There are concerns regarding forced marriage of women with learning disabilities, reflected in national guidance.<sup>193</sup>

The UK Government should make the necessary law, policy and practice changes<sup>194</sup> to be able to ratify the Istanbul Convention,<sup>195</sup> which would represent an important step forward in tackling violence against women.

**We recommend that the CRPD Committee asks:**

**56. With reference to CRPD General Comment No. 3 on Article 6 and the 2016 CESCR Concluding Observations (para 46) what assessment have the UK and devolved governments undertaken on the extent to which:**

<sup>190</sup> Public Health England (2015) Disability and Domestic Abuse – Risks, impacts and response, available [here](#); Sin CH *et al* (2009) 'Disabled people's experiences of targeted violence and hostility', Research Report 21; Hague, Gill, Thiara, Ravi K. and Mullender, Audrey (2011) Disabled women and domestic violence: making the links, a national UK study. *Psychiatry, Psychology and Law*, Volume 18 (Number 1), pp. 117-136; L. Ellison *et al.* (2014) 'Challenging Criminal Justice? Psychosocial Disability and Rape Victimisation', *Criminology and Criminal Justice*; McCarthy, M. (2015), 'I Know it was Every Week, but I Can't be Sure if it was Every Day: Domestic Violence and Women with Learning Disabilities. *J Appl Res Intellect Disabil.* doi:10.1111/jar.12237 [accessed: 10 November 2016].

<sup>191</sup> Specialised services for disabled women that provide accessible support are sparse. See: Woodin and Shah (May 2013) National Empirical Report UK Access to specialised victim support services for women with disabilities who have experienced violence, available [here](#); Women's Aid annual survey, available [here](#) and Harvey, S., Mandair, S. and Holly, J (2013) Case by Case: Refuge provision in London for survivors of domestic violence who use alcohol and other drugs or have mental health problems. London: AVA & Solace Women's Aid, available [here](#) [accessed: 10 November 2016].

<sup>192</sup> Most support organisations were experiencing funding cuts. Funders often made judgements about performance based on numbers of women assisted, at odds with providing an equal service to disabled women. Woodin, Shah, Tsitsou (June 2014) National Report UK Access to specialised victim support services for women with disabilities who have experienced violence, available [here](#) [accessed: 10 November 2016].

<sup>193</sup> For multi-agency practice guidelines, see the UK Government Forced Marriage Unit website, [here](#).

<sup>194</sup> For example, the adequate provision of specialist support services: Joint Committee on Human Rights (2015) 'Violence against women and girls: Sixth Report of Session 2014-15, section 4', available [here](#) [accessed: 16 February 2016].

<sup>195</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, available [here](#) [accessed: 16 August 2016].

- **initiatives to address all forms of domestic and sexual violence effectively assist disabled women?**
- **initiatives to address forced marriage effectively assist young women with learning disabilities?**

**57. When does the UK Government intend to ratify the Istanbul Convention, and make the necessary law, policy and practice changes to enable it to do so?**

## **Autonomy and integrity, including restraint (Articles 12, 14, 15, 17)**

### **The use of restraint**

Across the UK, there are concerns with the use of physical and/or chemical restraint<sup>196</sup> in detention, healthcare, and some education settings.<sup>197</sup>

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<sup>196</sup> The CRPD Committee has found that physical, mechanical and chemical restraint in medical facilities should be eliminated to protect rights under Article 14, and that such practices are 'not consistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment...article 15': CRPD Committee (2015) Guidelines on article 14 of the CRPD', available [here](#) [accessed: 5 August 2016].

<sup>197</sup> For example:

- England/Wales: The use of restraint of people with mental health conditions in state detention (prisons, police cells and hospitals) needs to be better monitored, with data made publicly available. See EHRC, (February 2015) Preventing Deaths in Detention of Adults with Mental Health Conditions: An Inquiry by the Equality and Human Rights Commission, available [here](#). While some progress has been made, data on the use of restraint in prison settings is still not routinely published. See [here](#) [accessed: 10 November 2016].
- Physical restraint was used most frequently in child and adolescent mental health services, acute wards in learning disability services and psychiatric intensive care in England. See Mind (2015) Restraint in mental health services, available [here](#) [accessed: 10 November 2016].
- England and Wales: between the years ending March 2010 and March 2015 incidents of use of restraints increased substantially relative to the size of the detained population in the secure estate for children and young people. UK National Preventative Mechanism (January 2017) Monitoring places of detention, Seventh Annual Report of the UK's NPM, p. 13, available [here](#) [accessed: 1 February 2017].
- Evidence of physical and/or chemical restraint of disabled people in the criminal justice system, healthcare settings and some education settings, including evidence of the use of psychotropic medication with people with learning disabilities, often as a form of chemical restraint to control challenging behaviour. E.g. see: EHRC (March 2016) England's most disadvantaged groups: People with learning disabilities: An Is England Fairer? review spotlight report (3 of 4), available [here](#); Talbot, J. (2008) Prisoners' Voices: Experiences of the criminal justice system by prisoners with learning disabilities and difficulties, London: Prison Reform Trust, available [here](#); EHRC (March 2016), EHRC submission to the UN Committee Against Torture 57th session, available [here](#); The Challenging Behaviour Foundation (January 2016) Statement on restrictive physical interventions with children, available [here](#). EHRC (forthcoming, 2017) Being disabled in Britain.
- Evidence of chemical restraint in longer-term care for people with dementia in Scotland, despite lack of systematic collection of data on the use of physical restraint in care settings. The Mental Welfare Commission for Scotland found high levels of use of antipsychotics, anxiolytics and sedative antidepressants, in the management of stressed and distressed behaviours. They were often used in combination and without evidence of regular review of necessity of these medications, available [here](#).
- Concerns regarding the use of physical and chemical restraints in health and social care in Northern Ireland. See: NIHRC (March 2012) 'In Defence of Dignity: The Human Rights of Older People in Nursing Homes', available [here](#) [accessed: 10 November 2016].



**We recommend that the CRPD Committee asks:**

**58. Can the UK and devolved governments provide evidence on the extent of the use of physical and chemical restraint for reasons related to disability in:**

- Prisons
- Youth justice systems
- Health and care settings
- Education settings?

**59. What steps are the UK and devolved governments taking to eradicate the use of restraint for reasons related to disability in all settings?**

### **Abuse in residential care**

There is evidence of abuse and neglect in residential care settings, particularly of older disabled people and people with learning disabilities.<sup>198</sup>

**We recommend that the CRPD Committee asks:**

**60. What actions are the UK and devolved governments taking in response to evidence of abuse of disabled people in care homes?**

### **Immigration detention**

The UN Committee Against Torture has urged the UK to stop detaining asylum seekers with mental health issues except as a last resort.<sup>199</sup> There are indications that immigration detention facilities are inadequately equipped for detainees with serious mental illness.<sup>200</sup> UKIM is also concerned at the lack of any Home Office policy or procedure to ensure

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• Concerns in Northern Ireland that the new statutory definition of restraint only applies where a person is deemed to lack capacity. See: Mental Capacity Act 2005, section 12.

<sup>198</sup> See: EHRC (November 2011), Inquiry into the Home Care of Older People, available [here](#); The Kings Fund (February 2013), The Francis report, available [here](#); Department of Health (10 December 2012) Winterbourne View Hospital: Report and response, available [here](#). Most recently, Southern Health NHS Trust accepted it was responsible for the death of a disabled patient at a short-term assessment and treatment unit in contravention of ECHR Article 2. Southern Health NHS Trust (June 2016) Statement regarding Connor Sparrowhawk's death, available [here](#) [accessed: 20 October 2016].

<sup>199</sup> UN Committee Against Torture (June 2013) Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session. Available [here](#) [accessed: 20 October 2016].

<sup>200</sup> There is a useful summary of one case about violation of ECHR Article 3, with references to six other cases, available [here](#) [accessed: 20 October 2016].

immigration detainees who lack mental capacity are provided with independent support to assert their legal right to challenge their detention.<sup>201</sup>

An independent review<sup>202</sup> recommended that: ‘those with a diagnosis of Post-Traumatic Stress Disorder...[and]...people with Learning Difficulties should be presumed unsuitable for [immigration] detention’.<sup>203</sup> The UK Government’s January 2016 response did not indicate an intention to end detention of disabled people.<sup>204</sup> New guidance and policies<sup>205</sup> recognise that some disabilities<sup>206</sup> indicate that detention may cause harm. However, the degree to which a presumption against detention applies is based on an assessment of risk for each individual. There are concerns that disabled people who cannot evidence that detention ‘is likely to lead to a risk of significant harm’ for them,<sup>207</sup> may be inappropriately detained under the new policies.<sup>208 209</sup>

**We recommend that the CRPD Committee asks:**

**61. What measures are the UK Government taking to ensure that where it currently detains people who lack mental capacity, they are provided with the independent support they require to assert their legal right to challenge their immigration detention?**

**62. Can the UK government confirm whether it will commit to using immigration detention only as a last resort and not detaining vulnerable persons?**

**Supported/substitute decision-making frameworks**

Legislation across the UK continues to provide for substitute decision-making.<sup>210</sup> Northern Ireland has introduced a single legislative framework for mental capacity and compulsory

<sup>201</sup> See para. 159, *R (ota) VC v SSHD* [2016] EWHC 273 (Admin).

<sup>202</sup> Shaw, S. (2016) ‘Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office’, p. 12, available [here](#) [accessed: 2 February 2016].

<sup>203</sup> Ibid. Recommendations 12 and 13.

<sup>204</sup> Home Office (January 2016) Government response to Stephen Shaw’s review into the welfare in detention of vulnerable persons, available [here](#) [accessed: 11 January 2017].

<sup>205</sup> Guidance issued under section 59 of the Immigration Act 2016, and associated policies (Chapter 55b of the Enforcement Instructions and Guidance and Detention Services Order 09/2016). These became operational in September 2016.

<sup>206</sup> Such as mental health conditions or serious physical disability.

<sup>207</sup> Adults at Risk Policy Guidance V.2,0, p.12 available [here](#) [accessed: 11 January 2017].

<sup>208</sup> Home Office, Immigration Act 2016: Guidance on adults at risk in immigration detention, August 2016, available [here](#) [accessed: 11 January 2017].

<sup>209</sup> The Government intends to ask Mr Shaw to carry out a short review in 2017 to assess progress against the key recommendations of his report: Hansard, Written Question, Minister of State (Home Office) (Immigration) Robert Goodwill, 15 December 2016, available [here](#) [accessed: 11 January 2017].

<sup>210</sup> England/Wales: Mental Health Act 1983 as amended; Mental Capacity Act 2005.

treatment which separates incapacity from identified disability.<sup>211</sup> It is unclear how far it ensures compliance with General Comment No. 1<sup>212</sup> and commencement is yet to occur.

The Essex Autonomy Project has made recommendations to reform legislation across the three jurisdictions<sup>213</sup> to achieve CRPD compliance.<sup>214</sup>

**We recommend that the CRPD Committee asks:**

**63. How will the UK and devolved governments ensure that capacity/incapacity law takes into account Article 12 and General Comment No. 1?**

**64. How have the UK and devolved governments ensured that disabled people who require it can access support to exercise their legal capacity?**

## **Deprivation of liberty**

There is a lack of effective safeguards to prevent people in hospitals or other care settings who are deemed incapable of consent, but are compliant with their admission and/or treatment, from being deprived of their liberty.<sup>215 216</sup>

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Scotland: Adults with Incapacity (Scotland) Act 2000 and Mental Health (Care & Treatment)(Scotland) Act 2004. Northern Ireland: Mental Capacity Act (Northern Ireland) 2016. Substitute decision-making refers to decisions made on behalf of a person who lacks capacity to make the decision.

<sup>211</sup> Mental Capacity (NI) Act 2016 received royal assent on 9 May 2016.

<sup>212</sup> The Essex Autonomy Project stated: 'it will be crucial to monitor how the MC (NI) Act's pioneering use of the concept of "special regard" is operationalised and adjudicated. Insofar as this concept is applied in form of rebuttable presumption approach, as we shall argue that it can and should be, it will represent an important step forward in the construction of a CRPD-compliant capacity statute... Insofar as the principle of special regard is operationalised as a rebuttable presumption approach along the lines recommended above, we believe that it could satisfy the relevant requirements of Art. 12.4'. The Essex Autonomy Project (2016) Three Jurisdictions Report, available [here](#) [accessed: 5 August 2016].

<sup>213</sup> England and Wales, Scotland and Northern Ireland.

<sup>214</sup> The Essex Autonomy Project (2016) Three Jurisdictions Report, available [here](#) [accessed: 5 August 2016].

<sup>215</sup> Established practice up to 2004 was to regard these patients as voluntary, however, the European Court of Human Rights found in 2004 that this practice was not compliant with Article 5 ECHR, the right to liberty and security of the person. *HL v UK* 45508/99 (2004) ECHR 471. Deprivation of liberty safeguards were introduced in England and Wales in 2008 by amendment to the Mental Capacity Act 2005, however, they are considered to have failed to deliver improved outcomes. See: The Law Commission (May 2015) Mental Capacity and Deprivation of Liberty Interim Statement, available [here](#). A proposal for replacement legislation should be published in March 2017. See: The Law Commission, Mental Capacity and Deprivation of Liberty, Current Project Status, available [here](#) [accessed: 20 October 2016].

<sup>216</sup> Scotland: the current incapacity legislation is not working effectively and the implications of supported decision-making have not been considered. There have been calls for a wide revision of the legislation. The Law Society of Scotland, the Mental Welfare Commission, The Public Guardian and SHRC, among others, all recommended a comprehensive review of the three pieces of legislation which govern non-consensual care and treatment, see [here](#) [accessed: 20 October 2016].

Northern Ireland: A capacity-based approach to deprivation of liberty is included in the Mental Capacity (Northern Ireland) Act 2016.

**We recommend that the CRPD Committee asks:**

**65. What have the UK and devolved governments done to provide effective legislative safeguards against the deprivation of liberty and ensure that these safeguards are based on the principle of supported decision-making?**

## Participation in political and public life (Article 29)

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### Voting

Barriers to voting for disabled people were highlighted following the 2010 general election.<sup>217</sup> Disabled people continue to face barriers,<sup>218</sup> although some progress has been made.<sup>219</sup>

**We recommend that the CRPD Committee asks:**

**66. How will the UK Government ensure that registration and voting will be made fully accessible to disabled people by the next elections at devolved and UK level?**

### Elected representatives

Available evidence indicates that disabled people are under-represented in political life across the UK,<sup>220</sup> and data collection requires improvement.<sup>221</sup>

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<sup>217</sup> A survey of 1,000 polling stations to assess how accessible the 2010 general election had been for disabled people found that two-thirds of polling stations had one or more significant access barriers. See: Scope (2010) Polls Apart, available [here](#) [accessed: 5 August 2016].

<sup>218</sup> Evidence on voter registration and turnout in the UK provided to a parliamentary inquiry in 2014 highlighted barriers faced by disabled people, particularly people with sight loss, people who are deaf, and those with learning disabilities. House of Commons (2014) Voter engagement in the UK. Fourth report of session 2014-15, House of Commons Political and Constitutional Reform Committee. HC 232 [Incorporating HC 1059, Session 2013-14], available [here](#) [accessed: 5 August 2016]. Barriers include: difficulties in voting accessibility to people affected by sight loss; low participation rates at elections for people with learning disabilities as well as, 'a cultural exclusion from the democratic process...'; physical barriers hindering the access of wheelchair-users to a building to cast a vote.

<sup>219</sup> Some positive steps taken by the UK Government since this 2014 inquiry include discussions with disability organisations to identify options for improving ease of registration and voting: Political and Constitutional Reform Committee (2 February 2015) Voter engagement in the UK: Government response, available [here](#); and the development of an easy read guide on registering to vote in partnership with the charity Mencap: Mencap (2014) Easy Read guide to voting and registering to vote, available [here](#) [accessed: 5 August 2016].

<sup>220</sup> UK/GB: Disabled people are under-represented as elected representatives. Reports suggest the proportion of self-declared disabled MPs fell following the 2015 General Election. See: EHRC (2015) *Smoothing the pathway to politics for disabled people*, available [here](#) [accessed: 6 January 2017].

Scotland: Before the 2016 election for the Scottish Parliament, three Members of the Scottish Parliament (MSPs) were disabled. After the election, it appears that only one MSP is openly disabled. To be

A significant obstacle to disabled people standing for election is additional disability-related costs they can incur.<sup>222</sup> An evaluation of the Access to Elected Office fund<sup>223</sup> and an announcement about its future were expected by early 2016. There has been no further announcement, despite calls for the fund to be reopened.<sup>224</sup>

**We recommend that the CRPD Committee asks:**

**67. How are the UK and devolved governments supporting disabled people to participate in political life, at the local and national level?**

### **Public appointments**

Disabled people are increasingly under-represented on public boards across the UK.<sup>225</sup>

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representative of the population, it has been estimated there should be around 23 disabled MSPs: Holyrood (1 June 2016) Where are all the disabled MSPs? (news article), available [here](#) [accessed: 5 August 2016].

Northern Ireland: See: Byrne et al (2014) 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD', p. 150, available [here](#) [accessed: 6 January 2017].

<sup>221</sup> The UK Government has suggested that to be representative of the 11 million disabled people in the UK, the House of Commons should include at least 65 disabled MPs: Government Equalities Office (2010) Response to the Speaker's Conference on Representation, available [here](#) [accessed: 5 August 2016].

However, the exact number of disabled parliamentarians is not known because a recommendation for the House to collect data about under-represented groups has not been implemented. See: House of Commons (2010) Speaker's Conference on Parliamentary Representation, available [here](#) [accessed: 6 January 2017].

The House of Lords Appointments Commission does not survey current peers, or those it appoints. The Scottish and Welsh Parliaments do not collect and publish this data either. Section 106 in the Equality Act 2010 for political parties to publish diversity data about their candidates has also not been enacted.

<sup>222</sup> EHRC (2015) Smoothing the pathway to politics for disabled people, available [here](#) [accessed: 5 August 2016].

<sup>223</sup> The Access to Elected Office Fund was set up in 2012 to provide financial support to disabled people standing for election to the UK Parliament but it closed in May 2015. See: HM Government (2015) Welcome to the Access to Elected Office for Disabled People Fund, available [here](#) [accessed: 11 September 2015].

<sup>224</sup> See Early Day Motion 999, available [here](#) [accessed: 7 October 2016].

<sup>225</sup> England and Wales: the percentage of appointments and reappointments of people declaring a disability fell from 8.6% in 2010/11 to 4.6% in 2014/15. See: Commissioner for Public Appointments (2015) Annual Survey of Ministerial Appointments and Reappointments by the Commissioner for Public Appointments. 2014-15, available [here](#) [accessed: 5 August 2016].

Scotland: the proportion of disabled people on public boards has fallen from 15.3% in 2014-15 to 11.8% in 2015-16, and is significantly less than the proportion of disabled people in the general population (19.6%): The Commissioner for Ethical Standards in Public Life in Scotland (2016) Annual Report 2015/16 p. 28, available [here](#) [accessed: 10 December 2016].

Northern Ireland: Disabled people continue to be significantly under-represented on the boards of public bodies. Information from the period 2011-12 indicates that less than 1% of those appointed were disabled (compared with 2% in the previous period). Source: Office of the First and deputy First Minister (2012): 'Public Appointments Annual Report 2011/12', p. 16, available [here](#) [accessed: 5 August 2016].

**We recommend that the CRPD Committee asks:**

**68. Can the UK and devolved governments provide information about the steps taken to increase representation of disabled people on boards of public bodies, and how progress is being monitored?**

## Statistics and data collection (Article 31)

### Data gaps and lack of disaggregated data

Despite improvements in the collection of disability statistics, there are significant data gaps across the nations,<sup>226</sup> and limited availability of disaggregated data.<sup>227</sup> Few disability statistics are disaggregated by impairment type,<sup>228</sup> inhibiting effective monitoring of CRPD compliance.<sup>229 230 231</sup>

The Initial State Report does not explain measures taken by governments under this article, nor how disability equality indicators will be further developed in accordance with the CRPD.

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<sup>226</sup> For example, statistics are collected about pupils with special educational needs (SEN)/additional support needs (ASN). However, not all disabled pupils have SEN/ASN and so the data collected about disabled pupils is not complete.

<sup>227</sup> Including disaggregation by other equality characteristics, such as sex, age and ethnicity. For example, there is limited data about the circumstances of disabled women and girls in the UK.

<sup>228</sup> Such as mental health condition or mobility impairment.

<sup>229</sup> Byrne et al (2014) Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD, p. 158, available [here](#) and Harper et al (2012): Disability programmes and policies: How does Northern Ireland measure up? Monitoring Implementation of the UNCRPD in Northern Ireland, p. 255, available [here](#) [accessed: 24 September 2016].

In England there is a need to collect data on: health outcomes for disabled people; identity-based bullying, school exclusions and absences for the routine publication of data on the use of restraint in prison settings. In Scotland there is a need to collect data on: the attainment of disabled children throughout their school career; on the use of restraint in care settings including the use of restraint by the National Health Service and to improve monitoring and data collection in relation to hate crime.

In England and Scotland, statistics on the number of disabled children who are looked after by the state are not routinely collected. Independent surveys carried out in prisons have identified significant under-reporting of the numbers of disabled prisoners.

<sup>230</sup> The disability-focused Life Opportunities Survey (ODI/DWP/ONS) is the latest in a series of specialist disability surveys and was funded for 3 waves, with data collection ending in September 2014. It is not known whether any similar survey will be carried out in the future, see [here](#).

<sup>231</sup> There are currently no proposals to collect impairment-type data in the 2021 Census for England and Wales, while a question on long-term health conditions is under consideration for Scotland's Census 2021.

**We recommend that the CRPD Committee asks:**

**69. Can the UK and devolved governments:**

- **provide information on the statistics and research data collected in all nations to meet the requirements of Article 31?**
- **explain how disability equality indicators are being developed in accordance with the CRPD and the Sustainable Development Goals (SDGs)?**
- **explain what steps have been taken to identify and fill gaps in the collection of disability statistics, including measures to ensure this data is disaggregated by type of impairment and by other equality characteristics?**

## **National implementation and monitoring (Article 33)**

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### **Independent Mechanism**

Since designation, none of the members of UKIM have been given additional funding to carry out their additional mandate as an Independent Mechanism.<sup>232</sup> For example, the lack of dedicated resources impedes the effective involvement of disabled people and their organisations in the UKIM.

**We recommend that the CRPD Committee asks:**

**70. In light of the CRPD Committee's guidance on Independent Mechanisms, to what extent is the UK Government resourcing the UK Independent Mechanism to ensure it can meet its function to monitor and promote the CRPD, and to effectively involve disabled people and their organisations?**

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<sup>232</sup> This is recommended in the UNCRPD (no date) Guidelines on Independent Monitoring Frameworks and their participation in the work of the Committee (advance unedited version), available [here](#) [accessed 10 October 2016].

## Annex: Recommendations

### Enhancing the status of CRPD in domestic law (Articles 3, 4)

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#### **CRPD in domestic law and policy**

1. The UK and devolved governments should incorporate CRPD into domestic law. This needs to include:
  - Access to a domestic remedy for disabled people who allege their rights under the CRPD have been breached
  - A domestic mechanism for scrutiny of policy and legislation to ensure compliance with the CRPD, and
  - Robust domestic mechanisms to hold decision-makers to account when it has been demonstrated that their actions or omissions have breached the CRPD.
2. The UK and devolved governments should ensure effective mechanisms are in place for the active ongoing involvement of disabled people, including children, in the development and implementation of law and policy.

#### **Human Rights Act 1998**

3. In light of proposals for a British Bill of Rights, the UK and devolved governments should ensure that there is no regression in the protection of human rights, including all CRPD rights.

#### **Brexit**

4. The UK Government should ensure that there is no regression on the protection of disabled people's rights as a result of Brexit.



## **Action plan**

5. The UK and devolved governments should ensure systematic implementation of the CRPD across all policy and geographical areas based on comprehensive action plans. Implementation plans should include all recommendations relevant to the rights of disabled people from other UN bodies, for example the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights.

## **Equality and non-discrimination (Article 5)**

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### **Gaps in equality legislation**

6. The UK Government, and Scottish Government where relevant, should reinstate all original and commence any outstanding provisions of the Equality Act 2010, and introduce new measures to address gaps in protection.
7. The Northern Ireland Executive should address legislative gaps in protection, including gaps that exist between disability equality law in Northern Ireland and GB, so as to guarantee disabled people effective legal protection against discrimination.

## **Awareness-raising (Article 8)**

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### **Prejudice and negative attitudes**

8. The UK and devolved governments should:
  - take steps to address prejudice and negative attitudes towards disabled people, including those with mental ill health and those claiming social security benefits. This could include positive awareness-raising campaigns
  - ensure that government communications do not fuel prejudicial views, particularly with regard to the right to disabled people claiming social security benefits
  - ensure that there is awareness of the CRPD among disabled people and throughout society.

## Accessibility (Articles 9, 21)

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### Overall framework

9. The UK and devolved governments should adopt an action plan and strategy that identifies existing barriers to accessibility for disabled people, sets time frames with specific accountable deadlines, and provides both the human and material resources to remove barriers and implement the action plan and strategy in full in line with CRPD General Comment 2.
10. In light of plans to exit the EU, the UK Government should pass parallel legislation on accessibility, setting standards in goods and services, in accordance with Article 9, drawing on EU models.

### Housing, the built environment and planning

11. The UK and devolved government should introduce national targets to ensure that new housing is increasingly accessible or adaptable for disabled people.
12. The UK and devolved governments should ensure that the built environment is accessible and enables disabled people to live independently, reviewing and revising the planning framework where necessary.

### Transport

13. The UK Government should set a target date by which all rail stations in the network should be accessible, focusing on the accessibility of journeys, not just of stations.
14. The UK Government should ensure that all transport and transport infrastructures are accessible to disabled people, including building accessibility into planning processes.
15. The UK and devolved governments should ensure that personnel of all public transport providers are equipped with the skills and knowledge to assist/support disabled passengers.
16. The UK and devolved governments should ensure that all new buses and trains provide accessible real-time travel information.

## **Information and communication**

- 17.** The UK and devolved governments should ensure that all communications (including online forms) of public authorities or that of their contracted providers are accessible to disabled people.
- 18.** The UK and devolved governments should take all appropriate steps to ensure existing barriers to accessing the internet to disabled people are removed.
- 19.** The UK and devolved governments should take appropriate steps to remove barriers to communication between Deaf and Deafblind people and their families, carers, education and healthcare staff, and public service providers, This could include support to undertake courses for Deafblind communication skills.

## **Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28)**

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### **Income poverty and material deprivation**

- 20.** The UK and devolved governments should examine the factors behind the higher levels of poverty amongst disabled people in general, and disabled children in particular, and develop a strategy to address these factors.
- 21.** The UK and devolved governments should ensure that the rights of disabled people including disabled children are prioritised within anti-poverty strategies.

### **Disproportionate impact of social security reforms**

- 22.** The UK should monitor and publish the impact of welfare reforms on disabled people. This should include assessments of the cumulative impact of tax and social security changes and public spending reductions on disabled people.
- 23.** On the basis of monitoring and cumulative impact assessments, the UK should mitigate any adverse impacts on disabled people in both the medium and long-term.
- 24.** If future impact assessments or monitoring exercises project a disproportionate impact on disabled people, the UK and devolved governments should address the CDESCR criteria for non-retrogression, putting in place any mitigating measures required.

## **Independent living funding**

**25.** The UK Government must take steps to ensure compliance with Article 19 where it has delegated responsibility for independent living funding to local authorities in England, and with respect to the forthcoming de facto closure of the Independent Living Fund for Northern Ireland.

## **Adult social care and support**

**26.** The UK and devolved governments should monitor the impact of any reductions in the availability of adult social care on the rights of disabled people under CRPD, and take immediate steps to address any adverse impacts identified.

**27.** The UK and devolved governments should review the impact of charging for adult social care and eligibility thresholds and improve the system to meet the requirements of Article 19.

**28.** The Scottish Government should incorporate the requirements of Article 19 into all aspects of its proposed reform of adult social care and give due consideration to whether new models protect and promote disabled people's rights under Article 19.

## **Support for carers**

**29.** The UK and devolved governments should put in place systems to ensure adequate support, including respite care, is available to:

- Disabled parents
- Disabled carers
- Parents with a disabled child
- Carers for a disabled person
- Young, sibling and peer carers?

**30.** Following its Green Paper consultation on the work capability assessment, the UK Government should ensure that reform of the system addresses:

- concerns that claimants with fluctuating and mental health conditions have been found 'fit work work', and their mental and physical health negatively affected during the process
- the detrimental impact of sanctions, which have been linked to deaths of people found fit to work, particularly those with mental illness or learning difficulty.

## Employment (Article 27)

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### Employment gap

- 31.** The UK and devolved governments should take positive steps to close disability equality gaps in employment.
- 32.** The UK Government should:
- set a timeframe, and introduce interim targets and a statutory reporting requirement, on its commitment to halve the disability employment gap
  - report regularly on progress including by impairment group; and identify steps if progress is insufficient.
- 33.** The UK Government should ensure that changes to the Access to Work programme comply with Article 27 by:
- widening support for mental health and complex health or medical conditions
  - monitoring any adverse impact on employment opportunities, for disabled people generally, and people with sensory impairments specifically
  - introducing mitigations such as additional funding flexibilities, extending transition arrangements and reviewing the cap level
  - Put in place a publicity programme for the Access to Work scheme amongst employers to increase awareness.
- 34.** The UK and devolved governments should ensure that employment support programmes effectively help disabled people find and stay in work.

### Barriers to employment

- 35.** The UK Government should evaluate strategies for supporting disabled people to find and maintain employment, including tackling disability discrimination in recruitment, and improving disabled people's access to apprenticeships, and take steps to roll out successful measures.
- 36.** The UK Government should build training on disability law and providing reasonable adjustments into new models of support resulting from the Green Paper: Improving Lives: Work, Health and Disability, to help remove barriers to recruitment and retention of disabled people.

## **Pay gaps**

**37.** The UK Government should:

- produce regular estimates of the gaps in hourly pay, for full-time and part-time workers, disaggregated by disability
- put in place an action plan for closing the disability pay gap; report regularly on progress, and identify steps if progress is insufficient.

## **Access to justice (Articles 13, 12)**

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### **Legal aid**

**38.** In relation to England and Wales, the UK should:

- expedite the review of the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) on access to justice and other CRPD rights for disabled people in England and Wales
- commission independent research on the equality and human rights impacts of LASPO on disabled people, and
- take concrete steps to mitigate any adverse impacts identified, including any indirectly discriminatory effects on disabled people.

### **Access to advice**

**39.** The UK Government should review the impact of budget reductions and legal aid reforms on the availability of legal advice by non-government organisations in England and Wales, and take action to address the problem of 'advice deserts'.

### **Court and Employment Tribunal fees**

**40.** The UK Government should publish the findings of its post-implementation review of Employment Tribunal fees, and address or mitigate any disproportionate impacts on disabled people.

### **Awareness of CRPD and reasonable accommodations**

**41.** In relation to Northern Ireland, the UK Government should ensure disabled people can access justice through courts and Tribunals on an equal basis with others, through initiatives such as the Equal Treatment Benchbook.

## **Disability discrimination in schools**

**42.** The UK should address the different treatment of disabled children seeking redress against discrimination or harassment in schools with regard to access to compensation and injunctive relief.

## **Education (Articles 24, 7)**

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### **Inclusive education**

**43.** The UK Government (and devolved governments where relevant) should:

- renew its commitment to developing ‘an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children’ (contained in the UK’s interpretative declaration on CRPD Article 24)
- remove the reservation and interpretive declaration on Article 24, and take concrete steps to progressively realise disabled children’s right to inclusive education
- address the recent trend away from inclusion within mainstream education, paying particular attention to General Comment No. 4 of the CRPD Committee.

### **School exclusions**

**44.** The UK and devolved governments should ensure that strategies to reduce the exclusion of disabled pupils, including those who display challenging behaviour arising from a disability, are in place and promoted in all areas.

**45.** The UK Government should review Regulation 4(1) of the Equality Act 2010 (Disability) Regulations 2010, which currently excludes ‘a tendency to physical abuse of other persons’ from the definition of ‘disability’.

### **Transition from school**

**46.** The UK and devolved governments should take steps to improve the process of transition for disabled children and young people from school to further education and employment.

## **Disabled Students' Allowance**

**47.** The UK Government should monitor the impact of changes to Disabled Students' Allowance for English disabled students, publish the results, and mitigate any identified negative impacts on disabled students' access, participation and attainment at university.

## **Additional support for learning**

**48.** The Scottish Government should apply the presumption of legal capacity from age 12 to ASL and ensure disabled children have support to allow them to exercise their legal capacity.

## **Educational attainment**

**49.** The UK and devolved governments should continue to monitor educational attainment rates for disabled pupils, focusing on the impacts of legislation and policy on improving attainment rates, and take action to improve the educational attainment of disabled pupils.

## **Health and life (Articles 25, 10)**

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### **Health inequalities**

**50.** The UK and devolved governments should take concrete steps to address health inequalities experienced by disabled people, including inequality in life expectancy and end of life care. Progress should be monitored and published, and further steps taken where progress is insufficient.

### **Access to, quality of, and outcomes from, mental healthcare services**

**51.** The UK and devolved governments should ensure there are sufficiently funded, appropriate and high quality mental health services to meet demand.

**52.** The UK and devolved governments should respond to the 2016 Concluding Observations of the Committee on the Rights of the Child by putting in place systems to regularly collect comprehensive data on child mental health, rigorously invest in child and adolescent mental health services and develop strategies with clear time frames, targets, measurable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources.



## **Inappropriate or long-term placement of children and adults with learning disabilities and/or autism**

**53.** The UK and devolved governments should ensure that people with learning disabilities and/or autism:

- are able to access community-based services to avoid involuntary placement in psychiatric hospitals, assessment and treatment units, or general acute wards
- remain in institutional or inpatient care (for the purpose of assessment and treatment) for the shortest possible time, and do not stay in a short-term facility on a long-term basis
- are provided with appropriate services for their needs, and not placed in the psychiatric estate unless they have a mental health need
- are protected by effective safeguards, including access to advocacy, peer support and supported decision-making.

## **Inappropriate use of ‘Do Not Resuscitate’ orders**

**54.** The UK Government should monitor the use of ‘Do Not Resuscitate’ orders in relation to disabled people to ensure that:

- guidance on the use of orders is accessible to patients and/or their representatives
- that healthcare professionals are consulting with patients when making a clinical decision as to whether cardio-pulmonary resuscitation is withheld, recording reasons where consultation has not taken place
- where there is evidence of inappropriate use of notices that immediate steps are taken to prevent orders being placed inappropriately on disabled people
- healthcare professionals are sufficiently skilled in understanding the communication needs of disabled people with a broad range of impairments and an awareness of the full spectrum of quality of life for disabled patients.

## **Freedom from exploitation, violence and abuse (Articles 16, 6)**

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### **Disability-motivated hate crime, hostility and harassment**

**55.** To address under-reporting of disability-motivated hate crime, the UK and devolved governments should ensure that the police and other statutory agencies evaluate their reporting and recording processes, in consultation with disabled people, and take steps to simplify them.

- 56.** The UK Government should undertake a full-scale review of aggravated offences and sentencing provision in England and Wales, and monitor the use of sentencing guidelines to assess sentencing consistency.
- 57.** The UK and devolved governments should employ consistent data collection methods across the criminal justice system and within individual agencies to allow comparative and chronological analysis.
- 58.** The Scottish Government should implement the recommendations of Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion.

### **Bullying of disabled pupils in schools**

- 59.** The UK and devolved governments should ensure that all schools collect qualitative and quantitative data on bullying of disabled children in schools, and use the data to develop strategies to protect disabled pupils.

### **Violence against disabled women**

- 60.** With reference to General Comment No. 3 on Article 6 and the 2016 Concluding Observations of the Committee on Economic, Social and Cultural rights (para. 46), the UK and devolved governments should take all necessary steps to:
- ensure that initiatives to address domestic and sexual violence, effectively assist disabled victims, including adequately funded support services and sufficient legal protection
  - ensure that initiatives to address forced marriage effectively assist women with learning disabilities.
- 61.** The UK Government should make the necessary law, policy and practice changes to be able to ratify the Istanbul Convention, and dedicate sufficient resources to central, devolved and local authorities to ensure its effective implementation.

## **Autonomy and integrity, including restraint (Articles 12, 14, 15, 17)**

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### **The use of restraint**

- 62.** The UK and devolved governments should ensure that evidence on the extent of the use of physical, mechanical and chemical restraint, and segregation and seclusion, is routinely published in relation to:

- Prisons
- Youth justice system
- Health and care settings
- Education settings

**63.** The UK and devolved governments should take steps towards eradicating the use of physical and chemical restraint for reasons related to disability, including mental health-related disability, in all settings. Steps could include:

- reviewing national and international best practice on methods of de-escalation and other practices which avoid resort to the use of restraint
- requesting technical assistance from the UN Special Rapporteur on the Rights of Persons with Disabilities
- ensuring all relevant professionals and staff have appropriate training and knowledge of best practice.

In any steps taken, the UK and devolved governments should ensure that reduction in the use of restraint does not lead to increases in other practices which threaten human rights, such as segregation and isolation.

### **Abuse in residential care**

**64.** The UK and devolved governments should strengthen measures to prevent the abuse of disabled people, in particular older disabled people and people with learning disabilities, in residential care by urgently acting on the findings of the most recent investigations and inspections.

### **Immigration detention**

**65.** The UK Government should:

- use immigration detention only as a last resort, cease the detention of vulnerable persons, and set a statutory time limit of 28 days for immigration detention
- ensure that, where it is currently detaining persons who lack mental capacity, people are provided with the independent support they require to assert their legal right to challenge their immigration detention.

## **Supported/substitute decision-making frameworks**

**66.** The UK and Scottish governments should implement the recommendations of the Essex Autonomy Project or take other appropriate measures to ensure compliance of mental capacity/incapacity legislation with Article 12 CRPD.

## **Deprivation of liberty**

**67.** The UK and devolved governments should provide effective legislative safeguards against the deprivation of liberty and ensure that these safeguards are based on the principle of supported decision-making.

## **Participation in political and public life (Article 29)**

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### **Voting**

**68.** The UK Government should publish clear and comprehensive proposals setting out how registration and voting will be made fully accessible to disabled people.

### **Elected representatives**

**69.** The UK Government should publish the evaluation of the Access to Elected Office Fund, and, based on the evidence, provide the most effective solution to ensure disabled people have equal prospects of gaining and remaining in elected office. This could include developing a collaborative approach with political parties.

**70.** The UK government should commence s106 of the EA 2010 so that political parties are required to publish diversity data about their candidates. The UK and devolved governments should also encourage political parties to identify and remove barriers to selection facing disabled people.

### **Public appointments**

**71.** The UK Government (in relation to England and Wales) and Northern Ireland Executive should take steps to promote representation of disabled people on boards of public bodies, for example through positive action measures, and to monitor and report on progress.

## Statistics and data collection (Article 31)

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### Data gaps and lack of disaggregated data

- 72.** The UK and devolved governments should regularly collect data in all nations to meet the requirements of Article 31, disaggregating by disability and all other protected characteristic groups, and by impairment type.
- 73.** The UK Government should include questions on long-term health conditions or disabilities, including type of impairment, in the 2021 censuses.
- 74.** The UK and devolved governments should ensure the development of disability equality indicators that are in line with the CRPD and the Sustainable Development Goals (SDGs).

## National implementation and monitoring (Article 33)

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### Independent Mechanism

- 75.** In light of the guidance document on Independent Mechanisms issued by the CRPD Committee, the UK Government should ensure that the UK Independent Mechanism is sufficiently resourced to meet the functions outlined in the document, including effective involvement of disabled people.

## Contacts

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Textphone 0808 800 0084  
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10:00 to 14:00 (Saturday)  
Post FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to: [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com), [information@nihrc.org](mailto:information@nihrc.org), [information@equalityni.org](mailto:information@equalityni.org) or [hello@scottishhumanrights.com](mailto:hello@scottishhumanrights.com). The Commissions welcome your feedback.

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