RESPONDENT INFORMATION FORM

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
Consultation on the Scottish Government's Draft Delivery Plan 2016-2020

Please Note this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name (if applicable)
Joint response from the Equality and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC)

Title
Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐
(Please tick as appropriate)

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3. Permissions - I am responding as...

**Individual / Group/Organisation**

[ ] Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

[ ] Yes  [ ] No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

[ ] Yes, make my response, name and address all available

[ ] Yes, make my response available, but not my name and address

[ ] Yes, make my response and name available, but not my address

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate

[ ] Yes  [ ] No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

[ ] Yes  [ ] No
CONSULTATION QUESTIONS

Outcomes

Section 2 of the delivery plan sets out four outcomes the Scottish Government and its partners are working towards. The outcomes are:

1. Equal and inclusive access to the physical and cultural environment, transport and suitable, affordable housing.
2. Equal and inclusive access to healthcare provision and support for independent living, with control over the best use of resources, including support for disabled children.
3. Equal and inclusive access to education, paid employment and an appropriate income and support whether in or out of work.
4. Equal and inclusive access to the justice system without fear of being unfairly judged or punished, and with protection of personal and private rights.

Q1: Do you agree or disagree that together these four outcomes cover the key areas of life the Scottish Government and its partners must focus on to achieve the rights of disabled people?

Agree ☐ Disagree ☐ Neither agree nor disagree ☐

Q2: Please comment here on your response above, or if you have any other comments on the outcomes

Please see the attached additional note, which sets out our role as part of the UK Independent Mechanism for UN CRPD; our general response to the four outcomes and to the delivery plan 2016-2020. We have provided our comments on the commitments in the relevant sections below.

Commitments

The following section invites your comments on the commitments the Scottish Government is making to help achieve the four outcomes.

There are a lot to consider and there is no requirement for you to provide an opinion on all of them if you don’t wish to.
Outcome 1 - Equal and inclusive access to the physical and cultural environment, transport and suitable, affordable housing

Q3: Do you agree or disagree that the commitments (1-16) described at Section 2.1 will help the Scottish Government make progress towards outcome 1?

Agree ☐ Disagree ☐ Neither agree nor disagree ☐

Q4: If you would like to make specific comments on any of the commitments intended to contribute to achieving outcome 1, please do so here. If not please skip to next question.
(Please refer to Section 2.1 for fuller descriptions of the commitments)

<table>
<thead>
<tr>
<th>Commitment (Outcome 1)</th>
<th>Comment</th>
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<tr>
<td>1. Transport accessibility</td>
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<td>2. Design for Ageing</td>
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<td>3. Raising awareness of accessible design</td>
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<td>4. Homes which are more accessible</td>
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<td>5. Accessible housing</td>
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<td>6. A new help guide aimed at boosting accessible design</td>
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<td>7. A new help guide to assist tourism businesses</td>
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<tr>
<td>8. A new help guide setting out key accessibility hints and tips</td>
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<td>9. Access statement online tool builder</td>
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<tr>
<td>10. Widening access and increasing opportunities for disabled people to engage in culture, heritage and the arts</td>
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<td>11. Recording and reporting of workforce diversity information</td>
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<td>12. Improving access to the historic environment and collections relating to the historic environment</td>
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<td>13. Disability Inclusion in Sport</td>
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<td>14. Action plan to promote disabled people’s participation in sport and physical activity</td>
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<td>15. Sportscotland investments</td>
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<td>16. One Scotland awareness raising campaign</td>
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</table>
Q5: Are there any additional commitments and/or ways that you would strengthen the outcome 1 commitments that you have not already mentioned in any comments above?

a) The delivery plan states that the key objectives under Outcome 1 fit well with a list of UNCRPD articles. However, it is not clear to us how the current list of commitments will progress disabled people’s rights under these articles:

   Article 12 – equal recognition before the law
   Article 21 – freedom of expression and opinion and access to information
   Article 29 – participation in political and public life

   As suggested in our covering letter, identifying the issues that are preventing disabled people from enjoying their rights under each UNCRPD article and then identifying the commitments to address these issues under each article would, in our view, provide a clearer demonstration of how the Government is implementing the UNCRPD.

b) Suggested improvements on commitments 4 and 5 - accessible housing

The Commissions are supportive of the key objectives under Outcome 1 however, we are not convinced that commitments 4 and 5 will deliver an equal choice over housing. Commitment 4 is that homes will be built to more recent standards and will be more accessible. Commitment 5 is to consider in greater depth the issues raised by DPOs and consider what further actions may be necessary and to discuss with the relevant bodies. In our view, these assurances do not go far enough and do not address the issue and impact of a lack of accessible housing.

In light of the evidence that was presented by DPOs during the Scottish Government policy seminars, we are disappointed that these commitments are not stronger. In particular we are disappointed that there is no commitment to take action that will guarantee that new housing stock is accessible, that disabled people’s housing needs will be properly assessed and that housing can be easily adapted when people become disabled.

It is worth noting that disability discrimination law, as set out in the Equality Act 2010 (EA 2010), is asymmetrical. This means that it is lawful to treat a disabled person more favourably than a non-disabled person. In addition, the positive action provisions in the EA 2010 allow proportionate action to achieve fuller and more effective equality outcomes for people who share a protected characteristic, such as disability, who are socially or economically disadvantaged or excluded or who otherwise face the consequences of past or present discrimination or disadvantage.

We recommend that the commitments in relation to accessible housing are amended to include specific actions that demonstrate the Government’s commitment to...
accessible housing for disabled people.

Outcome 2 - Equal and inclusive access to healthcare provision and support for independent living, with control over the best use of resources and support for disabled children

Q6:  Do you agree or disagree that the commitments (17-35) described at Section 2.2 will help the Scottish Government make progress towards outcome 2?

Agree ☐  Disagree ☐  Neither agree nor disagree ☐

Q7: If you would like to make specific comments on any of the commitments intended to contribute to achieving outcome 2, please do so here. If not please skip to next question.

(Please refer to Section 2.2 for fuller descriptions of the commitments)

<table>
<thead>
<tr>
<th>Commitment (Outcome 2)</th>
<th>Comment</th>
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<tr>
<td>17. Health Inequalities of people with learning disabilities data collection</td>
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<td>18. Advocacy</td>
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<td>19. The New framework for Hearing the Citizen Voice</td>
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<td>20. Routes to Inclusion – ‘Engaging disabled people and their organisations’</td>
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<td>21. Allied Health Professionals and Independent Living – delivery plan</td>
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<td>22. NHS - 2 year internship for disabled graduates in partnership with NHSScotland and Glasgow Centre for Inclusive Living Equality Academy</td>
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<td>23. NHS Scotland Learning Disability Employment Programme</td>
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<td>24. Disability Inclusion Promotional Campaign</td>
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<td>25. Measure compliance of NHS Boards on embracing equality diversity and human rights in the NHS in Scotland</td>
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<td>26. Child Rights and Wellbeing Impact Assessment (CRWIA) for all policy development affecting children</td>
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<td>27. Fund for projects to support disabled children and their families</td>
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<td>28. Information Hub</td>
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<td>29. Transitions Test of Change Project</td>
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</table>
30. Child Internet Safety stakeholder group

31. Review of inclusion of people with learning disabilities or autistic spectrum disorders under the Mental Health (Care and Treatment) (Scotland) Act 2003.

32. Consult on Scottish Law Commission’s review of the Adults with Incapacity Act and thereafter carry out a scoping exercise in relation to a wider review of the Adults with Incapacity legislation.

33. Review of policies on guardianship and consider circumstances in which supported decision making can be promoted

34. An integrated children’s rights and equalities impact assessment for the Scottish Children’s Reporter Administration

35. Enhanced learning and development framework for foster carers

Q8:  Are there any additional commitments and/or ways that you would improve the outcome 2 commitments that you have not already mentioned in your answers above?

a) As with Outcome 1, the delivery plan states that the key objectives under Outcome 2 fit well with a list of UNCRPD articles. However, it is not clear to us how the current list of commitments will progress disabled people’s rights under these articles:

    Article 17 – protecting the integrity of the person
    Article 19 – independent living
    Article 21 – freedom of expression and opinion and access to information
    Article 25 – health

b) Additional commitments on mental health

    We were surprised there is not a specific objective on mental health under Outcome 2 and that people with mental health conditions are not mentioned within any of the key objectives.

    Is Britain Fairer (IBF)\(^1\) identified that there was an increase in Scotland in the

\(^1\) EHRC (2015) Is Britain Fairer? The state of equality and human rights 2015, p58
proportion of adults aged 25-34 at risk of poor mental health. Across the UK, mental health problems accounted for 23 per cent of the total ‘burden of disease’ but only a quarter of all those with mental ill health received treatment, compared with the vast majority of those with physical health problems. It also noted that although there are positive developments in the availability of high-quality mental health care, concerns have been expressed about variations in the quality of mental health services; the use of overly restrictive practices; lack of therapeutic activities and the use of control and restraint.²

IBF³ identified a number of disadvantages that are associated with mental health:

- People with some forms of serious mental health conditions have shortened life expectancy.
- In Scotland, there was little change in stigmatising attitudes towards mental health.
- Serious concerns have been expressed about access to children and adolescent mental health services.
- Gender differences exist in mental health; in particular, one in six women were at risk of poor mental health compared with one in eight men⁴.

A number of concerns have been raised about the implementation of the Mental Health (Care and Treatment) (Scotland) Act 2003. The Mental Health (Scotland) Act 2015 has made some progress in addressing concerns, however, outstanding issues remain:

- The Mental Welfare Commission for Scotland (MWCS)⁵ has found that there continues to be wide variation in the understanding and interpretation of the sections of the 2003 Act that allow restrictions to be placed on people who are detained.
- MWCS also found restrictions on individuals not subject to compulsion under the 2003 Act that were not legally authorised and that there was a lack of knowledge among staff and individuals about the right of appeal and access to mental health advocacy.
- Pressure on local authority budgets is also likely to impact on the care and support services local authorities are required, under the Mental Health (Care and Treatment) (Scotland) Act 2003, to provide for people with mental health

² EHRC (2015) see note 1, p61
³ EHRC (2015) see note 1, p101
⁴ IBF (2015) Health
conditions who are not in hospital.

Non-natural deaths of adults with mental health conditions in detention:

- People with mental health conditions in detention should receive appropriate and timely treatment. For this to happen, sufficiently trained staff must be in place with the right skills, facilities must be fit for purpose and suitable protocols and procedures must be in place. In 2014, the EHRC carried out research in relation to adult deaths in detention in Scotland.⁶ This research found Police Scotland and NHS Scotland need to continue work to clarify processes and responsibilities to ensure people with mental health conditions who are detained are assessed and placed appropriately. The research also found that there is insufficient mental health training of staff in both the police and prison services and progress to address this is slow and patchy⁷.

- The need to prioritise mental health training of staff and making sure detention facilities are fit for purpose comes at a time when there is increasing pressure on public sector finances. For instance, Audit Scotland⁸ reports that so far public bodies have coped well with smaller budgets. Since 2009/10 public sector budgets have fallen each year with the Scottish budget decreasing by 9 per cent in real terms to 2014/15.⁹ However, they acknowledge that public sector bodies such as the NHS, the police and prison service face increasingly difficult choices in reducing spending while maintaining service standards and meeting rising demand.¹⁰

In light of these concerns, we recommend that the delivery plan includes commitments from the Scottish Government that will:

- Make progress towards improving access to healthcare and support for people with mental health conditions;

- Ensure people with mental health conditions enjoy their right to independent living;

- Address outstanding concerns about the implementation of the Mental Health

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⁷ EHRC (February 2015), see note 35

⁸ Audit Scotland works with the Auditor General and the Accounts Commission to make sure organisations that spend public money in Scotland use it properly, efficiently and effectively – see Audit Scotland website, available at: http://www.audit-scotland.gov.uk/about/


¹⁰ Audit Scotland (June 2014) p9 see note 32
Support Police Scotland, NHS Scotland and the Scottish Prison Service to implement the recommendations from the EHRC adult deaths in detention research

In September 2015, SHRC and MWCS published a report ‘Human rights in mental health care in Scotland’\(^{11}\), making nine recommendations towards increasing the focus on rights as a key component of mental health care in Scotland (Commitment 5 of the Scottish Government’s Mental Health Strategy). These included that:

- The next mental health strategy should be explicitly built around a rights based approach. It should utilise the human rights framework to shape its aims and mainstream human rights across its commitments. In doing so, it should be informed by the lived experience of service users and should align with the aims of Scotland’s National Action Plan for Human Rights.

- The Code of Practice accompanying the Mental Health (Care and Treatment) (Scotland) Act 2003 should be revised to involve explicit connections to human rights principles and to the human rights framework. Doing so will help to embed rights based practice.

We recommend that the delivery plan includes commitments to take forward these and the remaining recommendations of that report.

c) Additional commitment on adult social care

Disabled people and their organisations have told the Commissions that they consider the effective implementation of Article 19, the right to independent living, as intrinsic to and a pre-requisite of other rights under the Convention. Cumulatively, welfare reform; changes to the eligibility criteria for social care; cuts on social care budgets; the lack of portable care packages and cuts to disabled people’s services are having a particularly negative impact on disabled people’s ability to realise their right to independent living.

Adult social care enables many disabled people to live independently. However, total gross expenditure on adult social care decreased by 3.4% in Scotland.\(^{12}\) Local authorities are also required, under the Mental Health (Care and Treatment) (Scotland) Act 2003, to provide community and aftercare services for people with mental health conditions. However, there have been reports\(^{13}\) of the negative effect of local authority cuts to voluntary sector mental health service providers on people with mental health conditions and the mental health and wellbeing of the Scottish

\(^{11}\) SHRC, MWCS  [http://www.scottishhumanrights.com/resources/reports/Mentalhealthreport](http://www.scottishhumanrights.com/resources/reports/Mentalhealthreport)

\(^{12}\) EHRC p62

Disabled people rely on a variety of different benefits as well as the support provided by local authorities. We are aware that the Scottish Government is developing a model which will look at the financial effects on disability households of the combined changes to benefits. However, as far as we are aware, this work is not considering the impact of changes to social care packages and cuts to disabled people’s services nor does it identify mitigating actions that could be taken by the Scottish Government to ensure disabled people enjoy their right to independent living.

Therefore, we suggest that there should be a commitment to identify the cumulative impact of changes to social care packages, cuts to disabled people’s services and welfare reform and to identify the mitigating actions that could be taken by the Scottish Government.

d) Suggested improvements to commitment 32

The Commissions welcome the review of Scotland’s Adult with Incapacity legislation and the forthcoming consultation on the Scottish Law Commission Report.

In relation to commitment 32, any scoping work or wider review must also take into account Article 14(1)(b) of the UNCRPD, which provides that, “state parties shall ensure that disabled people, on an equal basis with others, are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.”

The provisions of Article 5 of the European Convention on Human Rights and Article 14 of UNCRPD affect people with mental health conditions, as well as those with learning or intellectual disabilities, because the Mental Health (Care and Treatment) (Scotland) Act 2003 allows people with a ‘mental disorder’ who are deemed, because of the ‘mental disorder,’ to be unable to make decisions about medical treatment to be detained or to be subject to compulsory treatment orders. Therefore, the scoping work and wider review should cover the whole legal framework for non-consensual decision making in Scotland.

e) Suggested improvements to commitment 33 – supported decision-making

In relation to commitment 33, in the Commissions’ view, in order to comply with Article 12 of the UNCRPD the Scottish Government must take appropriate measures to provide disabled people with access to supported decision-making. Therefore, it is not enough to “consider the circumstances in which supported decision-making can be promoted”. The commitment should be to ensure supported-decision making is available to all disabled people.

In their report on Commitment 5 of the Scottish Government’s Mental Health Strategy, the SHRC and MWCS recommended that, “the Scottish Government
should coordinate interagency discussion and action at a national level to explore issues of capacity and supported decision-making. Efforts should be focused on strengthening existing forms of supported decision-making and identifying how further models can be developed which reflect the Scottish legal and service context, and respond to the implications of the UNCRPD.”\textsuperscript{14}

The Commissions are participating in the Essex Autonomy Three Jurisdictions Project, which is considering the question of whether existing UK’s laws and practices comply with the UNCRPD.

We would suggest that the commitment should reflect the recommendations already made on this issue by the SHRC and MWCS and provide an assurance that the Scottish Government will take into account the conclusions reached by the Essex Autonomy project.

f) Suggested improvements to commitment 33 - guardianship

Commitment 33 states that the Scottish Government will review policies on guardianship, however it is not clear how wide the scope of this review will be and if it will address concerns that have been raised about the law and practice in relation to indefinite guardianship.

In their monitoring reports, the MWCS has raised concerns about the high percentage of welfare guardian orders granted on an indefinite basis. They are particularly concerned about “the lack of automatic, periodic judicial scrutiny of approved orders which as a result puts the onus on the individual or another party with an interest to challenge the order,” and “the seeking and granting of orders on an indefinite basis for young adults with a learning disability.”\textsuperscript{15} According to the MWCS, although the percentage of orders granted on an indefinite basis has decreased, “this is, however, an area that needs a fundamental change in the law and continued monitoring in the interim.”\textsuperscript{16}

Therefore, we suggest that commitment 33 is amended to addresses the concerns that have been raised by the MWCS about indefinite guardianship.

g) Suggested improvement to commitment 35 – kinship care

Commitment 35 aims to improve the support for looked after disabled children through an enhanced learning and development framework for foster carers. However, there is no commitment to improve the support for looked after disabled children who are cared for by kinship carers. We understand that formal kinship carers do not have access to the same learning and development framework as

\textsuperscript{14} See footnote 12

\textsuperscript{15} MWCS (9 October 2014) Adults with Incapacity Act monitoring 2013/ 2014, p

\textsuperscript{16} MWCS (9 October 2014) p20

foster carers. Nonetheless, there is no reason to suggest that the needs of looked after disabled children in kinship care are any different from those in foster care. Therefore, we suggest that this commitment is improved to ensure that all looked after disabled children and their kinship families receive the support they need.

Outcome 3 - Equal and inclusive access to education, employment and an appropriate income whether in or out of work

Q9: Do you agree or disagree that the commitments (36-48) described at Section 2.3 will help the Scottish Government make progress towards outcome 3?

Agree ☐  Disagree ☐  Neither agree nor disagree ☐

Q10: If you would like to make specific comments on any of the commitments intended to contribute to achieving outcome 3, please do so here. If not please skip to next question.

(Please refer to Section 2.3 for fuller descriptions of the commitments)

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<thead>
<tr>
<th>Commitment (Outcome 3)</th>
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<tbody>
<tr>
<td>36. Continued commitment to implement additional support for learning</td>
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<td>37. Anti-Bullying – respectme and review and refresh of the ‘National Approach to Anti-bullying for Scotland’s Children and Young’</td>
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<tr>
<td>38. Overarching commitment from Fair Work Directorate</td>
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<td>39. Investment in Developing the Young Workforce and further investment to support young people with barriers to employment including disability</td>
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<td>40. Supported Employment Model</td>
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<td>41. Supported Businesses</td>
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<td>42. Establishment of a Fair Work Convention</td>
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<td>43. Disability Employment Services in Scotland</td>
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<td>44. Ensuring flexible and integrated support is put in place to support individuals with particular needs, including disabled people into work</td>
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<td>45. Abolish fees for employment tribunals and consultation re barriers that disabled</td>
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Q11: Are there any additional commitments and/or ways that you would strengthen the outcome 3 commitments that you have not already mentioned in your answers above?

a) Comment on commitment 36 - rights of children

Commitment 36 states that the Education Bill extends “rights to all children aged 12 and over with additional support needs, including those with a disability” and that “children will be able to directly influence the additional support that is provided for them”. We fully support the extension of rights for children aged 12 – 15 years in relation to the provision of additional support needs. However, we believe the changes proposed in the Education (Scotland) Bill will not deliver this; rather it significantly weakens the rights of children and limits their ability to exercise their rights.

The Commissions, together with the Children and Young People’s Commissioner Scotland, Inclusion Scotland, Enable and the Govan Law Centre Education Law Centre have raised significant concerns about specific aspects of the Bill with the Government and the Scottish Parliament Education and Culture Committee.

Rather than working from a presumption of capacity at the age of 12, in line with the Age of Legal Capacity (Scotland) Act 1991, the Bill instead requires all children to undergo an assessment of capacity before being able to exercise their rights. This is a significant departure from the Age of Legal Capacity (Scotland) Act 1991 as the Bill reverses the presumption of capacity which applies under that Act for children aged 12 or over. We are unconvinced by the Government’s rationale that a new approach towards capacity is required in order to safeguard children exercising these rights. We believe there is a real risk that children and young people will find it more difficult to exercise their rights as a result of these proposals.

The Bill, as drafted, creates a process which is inconsistent with the parallel procedures when a child or a young person makes a reference to the Additional Support Needs Tribunal Scotland in relation to disability discrimination. A child may
have grounds to make a disability discrimination claim and a reference under Additional Support Needs legislation, which both arise from the same set of circumstances. This might be, for example, a failure by a school to provide communication support.

To make a disability discrimination claim, the child/young person is presumed to have capacity at 12, unless proven otherwise, in line with the provisions of the Age of Legal Capacity Act (Scotland) 1991. Where the child has capacity, they are free to exercise their rights. There is no requirement to undergo any further assessment. However, that same child, attempting to exercise various rights under the Bill, would have to pass both a ‘capacity’ and a ‘best interests’/‘adverse impact on well-being’ assessment before they could make a reference in relation to the same set of circumstances.

b) Additional education commitment - disability attainment gap

We appreciate that information is provided in the annexes about ongoing work to improve access to education and in particular the attainment gap. However, this does not explain how the issues causing the disability attainment gap will be identified and action taken to reduce it.

We know that disabled people are more likely to have poorer educational outcomes at all stages of education, but particularly during their school years. Therefore, we recommend the inclusion of a commitment that seeks to address the disability attainment gap.

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**Outcome 4 - Equal and inclusive access to the justice system without fear of being unfairly judged or punished, and with protection of personal and private rights**

**Q12:** Do you agree or disagree that the commitments (49-54) described at Section 2.4 will help the Scottish Government make progress towards outcome 4?

Agree ☐ Disagree ☐ Neither agree nor disagree ☐

**Q13:** If you would like to make specific comments on any of the commitments intended to contribute to achieving outcome 4, please do so here. If not please skip to next question.

(Please refer to Section 2.4 for fuller descriptions of the commitments)

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<td><strong>49.</strong> Review of legal aid contributions for disabled people</td>
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<td><strong>50.</strong> Encourage reporting of hate crimes against disabled people</td>
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<td><strong>51.</strong> Accessible information</td>
<td></td>
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<td><strong>52.</strong> Accessibility of sites and services</td>
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<tr>
<td><strong>53.</strong> Develop and deliver a ‘pilot’ improvement project focusing on preventing and removing disability hate crime from society</td>
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<td><strong>54.</strong> Engage with DPOs to explore extent of violence against disabled women and girls, in the context of our ambitions under Equally Safe</td>
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**Q14:** Are there any additional commitments and/or ways that you would improve the outcome 4 commitments that you have not already mentioned in your answers above?

a) In general, we agree with the commitments that have been identified to deliver Outcome 4.

b) With regard to Commitment 49, we recommend that the review take a broader view of the impact of legal aid changes on people with disabilities. The issue of contributions specific to people with disabilities is only one piece of the overall impact. General reductions of the legal aid budget are likely to have a disproportionate impact on people with disabilities and the cumulative impact of all changes to the legal budget must therefore be factored into the review.

c) Additional commitment to determine the use and effectiveness of special measures for victims and witnesses with learning disabilities

We understand that the Scottish Government Justice Analytical Services Programme for 2015-16 includes as an area of work: “identifying success for special measures; advice on monitoring systems for special measures for victims and witnesses.” We recognise that there have been a number of initiatives in Scotland to improve the way in which people with learning disabilities are supported through the criminal justice system and there is an acceptance of the need to provide support to people with learning disabilities so that they can provide evidence and participate in all parts of the criminal justice process. However, we note that there is no automatic entitlement to special measures available to adults with learning disability, unlike the provisions in the Victims and Witnesses (Scotland) Act 2014 for child witnesses and victims of sexual offences, domestic abuse, human trafficking and stalking.

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Therefore, we recommend that an additional commitment is included to identify the use and effectiveness of special measures for victims and witnesses with learning disabilities.

d) Additional commitment on training for legal system personnel

The Scottish Government should consider a commitment to supporting measures to ensure that legal system personnel who interact with persons with disabilities involved in court proceedings are appropriately trained. An initiative of this nature was launched in England and Wales in 2013, which aims to change criminal justice practitioners’ approaches to vulnerable witnesses18, however, we understand that there is no parallel in Scotland as yet.

e) Additional commitment to improve interpretation services for Deaf and hard of hearing people as witnesses, victims and those accused of crime.

An additional commitment to improve interpreter services for Deaf and hard of hearing people should be included. We are aware that the Working Group on Interpreting and Translation (WGIT) has undertaken scoping work to gather data and understanding relating to the provision of interpreting services within the Scottish Criminal Justice system and published recommendations in 201319. However, we are unaware of whether these recommendations were taken forward or whether they have addressed the findings from the Justice Disability Steering Group Deaf Connections Involvement event in 200920. In particular, whether steps have been taken to ensure more lip readers, BSL interpreters and note-takers for Deaf and hard of hearing people are available. We also note that the Scottish Legal Aid Board (SLAB) has a list of registered interpreters and translators21 who have agreed to do work at SLAB rates. There appears to be only one person on the list who provides sign language and it is not clear whether there any lip readers or note-takers.

Themes

Section 3 of the delivery plan outlines three ‘cross-cutting’ themes – which are ways of working – and which will underpin all that we do to deliver each of the outcomes. The themes are:-

• Disabled people are empowered to participate fully

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18 The Advocate’s Gateway http://www.theadvocatesgateway.org/
19 Working Group on Interpretation and Translation (revised 2013) “Enhancing the professionalising of the provision of interpreting in the Scottish Criminal Justice System, Key findings of a Scoping Exercise”
21
• Communication is accessible and inclusive of all
• The barriers facing disabled people are known, understood and addressed

Q15: Do you agree or disagree that these are the most important themes that the Scottish Government needs to build in to the way it works across all activity to achieve the rights of disabled people?

Agree X  Disagree ☐  Neither agree nor disagree ☐

Q16: Please comment here on your response above, or if you have any further comments on the themes

a) Delivering the three ways of working

The Commissions’ agree strongly that these themes need to be built into the way the Government works. These are part of the general obligations on the Scottish Government under Article 4 of UNCRPD. We are therefore pleased that the Government has identified that these specific ways of working need to be adopted in order to deliver each of the outcomes.

However, while we welcome this approach we are unclear what the process is for building these themes into day to day work and how this can be achieved without a commitment to encourage and support policy leads to adopt these ways of working.

As is pointed out in the delivery plan, the Equality Unit is the named focal point for coordinating the implementation of UNCRPD in Scotland and, as such, it appears to us that encouraging and supporting these ways of working is within the remit and existing work of the Equality Unit.

Therefore, we suggest that this is explained in part 3 of the delivery plan – delivering change - and consideration given to whether the delivery plan should include a commitment to adopting these ways of working.

b) Raising awareness

We are pleased that the Scottish Government will continue to raise awareness of disabled people’s human rights and promote the UNCRPD. However, it is not clear to us whether this commitment includes what is required for the effective implementation of the UNCRPD, which is to raise awareness across Government departments; devolved public services; disabled people and society as a whole.
Next steps and any further comments

Q17: Section 5 of the delivery plan details the next steps for the Scottish Government’s approach to making the UNCRPD a reality for disabled people in Scotland. Do you have any comments on this section, or anything additional you would like to see added here?

See above.

Q18: Are there any other comments you would like to make on the overall delivery plan, to inform its further development and implementation?

Please see our additional comments paper.