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# Introduction

1. 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 UKIM under Article 33 of the Convention on the Right of Persons with Disabilities (CRPD). They are tasked with promoting, protecting and monitoring implementation of the CRPD across the UK.

## How to read this document

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This submission provides information on the implementation in the UK of the CRPD. It gives an update on UKIM's earlier submissions to the CRPD Committee in February 2017, which are all available on the [EHRC's website](#):

- UKIM (2017), 'Disability Rights in the UK'
- EHRC (2017), 'Disability Rights in England'
- EHRC (2017), 'Disability Rights in Wales'
- EHRC and SHRC (2017), 'Disability Rights in Scotland'
- NIHRC and ECNI (2017), 'Disability Rights in Northern Ireland'

2. The submission also responds to the CRPD Committee's List of Issues for the UK<sup>1</sup> in light of the State Party's reply to the List of Issues.<sup>2</sup> The CRPD Articles and List of Issues questions that each section relates to are indicated in the headings and sub-headings.

3. Following the approach of UKIM's earlier submissions, we have identified problems under 14 thematic areas that we consider to be especially pressing for disabled people. We refer to evidence in our February 2017 submissions where relevant, and present new evidence on recent developments, and in answer to some List of Issues questions. This submission is therefore best read alongside UKIM's February 2017 submissions.

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<sup>1</sup> CRPD Committee (2017), 'List of issues in relation to the initial report of the United Kingdom of Great Britain and Northern Ireland'. Available [here](#) [accessed: 25 July 2017]

<sup>2</sup> Office for Disability Issues (2017), 'List of issues in relation to the initial report of the UK of GB and Northern Ireland: government response'. Available [here](#) [accessed: 25 July 2017]. Note: UKIM will provide the CRPD Committee with an additional briefing to highlight any gaps in the State Party reply to the List of Issues prior to the public examination in August 2017.

4. UKIM has developed recommendations, included after the executive summary, which the CRPD Committee may wish to consider when formulating its Concluding Observations for the UK and devolved governments. Some of these recommendations have been informed by our discussions with disabled people and their representative organisations.<sup>3</sup>

5. The EHRC and the SHRC in Scotland funded a civil society coalition to produce an independent report for the CRPD Committee pre-sessional working group in March 2017.<sup>4</sup> The EHRC is also funding some disabled people's organisations (DPOs) from England, Wales and Scotland to attend the CRPD Committee session in Geneva in August 2017.

## Terminology

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6. In this report, we use the term 'disabled people' rather than 'persons with disabilities'. The term 'disabled people' is recognised by the disability rights movement in the UK to align with the social and human rights model of disability, as it is considered to acknowledge the fact that people with an impairment are disabled by barriers in the environment and society.

## UK constitutional arrangements

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7. The UK comprises 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, and it maintains responsibility for matters that have not been devolved ('reserved' matters) and for England. Responsibility for implementing the CRPD therefore lies with the UK and devolved governments.

8. 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>5</sup>

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<sup>3</sup> For example, at stakeholder engagement events on 6 July in London and on 18 July in Scotland, and meetings of EHRC Wales's Equality and Human Rights Exchange to discuss the CRPD in Conwy (23 March 2017) and Merthyr Tydfil (28 March 2017).

<sup>4</sup> Disability Rights UK and Disability Wales (2017), 'Implementation of the UN CRPD in England and Wales shadow report'. Available [here](#) [accessed: 25 July 2017]. Inclusion Scotland *et al.* (2017), 'Implementation of the UN CRPD – Shadow report from Scotland'. Available [here](#) [accessed: 25 July 2017]. Inclusion Scotland, Disability Rights UK and Disability Wales (2017), 'Implementation of the UN CRPD – Alternative report – Great Britain'. Available [here](#) [accessed: 25 July 2017]

<sup>5</sup> The Supreme Court (2016), 'The Supreme Court and the United Kingdom's legal system'. Available [here](#) [accessed: 27 July 2017]

## Key developments

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### 9. Important developments since UKIM's February 2017 submissions include:

- A UK General Election took place on 8 June resulting in a minority Conservative government. The UK Government held an engagement event with civil society organisations in May 2017 about the CRPD Committee's List of Issues for the UK. However, due to restrictions during the pre-election period,<sup>6</sup> officials were unable to discuss any substantive policy issues.
- The European Union (Withdrawal) Bill was introduced in the UK Parliament on 13 July 2017. The White Paper on the Bill states that: 'all the protections covered in the Equality Act 2006, the Equality Act 2010 and equivalent legislation in Northern Ireland will continue to apply once the UK has left the EU'.<sup>7</sup> However, if the Bill is passed in its current form, the EU Charter on Fundamental Rights will be removed from UK law, and there are protections relevant to disabled people – such as the right to non-discrimination (Article 21) and the right to preventative health care (Article 35) – that do not have equivalent protections in UK law and may be lost.
- EU law more generally is an important vehicle through which CRPD rights are given effect in member states' legal systems. Since December 2010<sup>8</sup> the EU has itself been a signatory to the CRPD. As a result, it is explicitly committed to the full realisation of disabled people's rights as set out in the CRPD in areas that are within the EU's competence. One aspect of this is that the CRPD shapes new EU laws, policies and programmes. Another is that the CRPD influences interpretation of existing EU law by the Court of Justice for the EU (CJEU). The decisions of the CJEU have a direct impact on the domestic law of member states.<sup>9</sup> In the absence of anything equivalent to EU law as a whole, the UK's withdrawal from the EU constitutes the loss of a very significant way in which CRPD rights are applied and realised in practice. To ensure there is no regression on current levels of protection, and to benefit from progress driven by the CRPD, the UK Government will need to take additional steps to those currently proposed to ensure these protections are clearly and explicitly incorporated into UK law, for example by giving enhanced status to equivalent rights in UN human rights treaties, including the CRPD.

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<sup>6</sup> The pre-election period, often colloquially referred to as 'purdah', describes the period of time immediately before elections or referendums in the UK, when specific restrictions are placed on the activity of civil servants. See [here](#) [accessed: 28 July 2017].

<sup>7</sup> Department for Exiting the European Union (2017), 'The Repeal Bill: White Paper', p. 16. Available [here](#) [accessed: 27 July 2017]

<sup>8</sup> See Council Decision/2010/48/EC

<sup>9</sup> For example, the CJEU has considered and positively applied the CRPD to address the question of defining disability for the purposes of an EU anti-discrimination directive. See their judgement in the case of *Ring v Denmark* (Case numbers C-335/11 and C-337/11) dated 11 April 2013, concerning the EU Framework Directive (Directive 2000/78/EC)



- The potential impact of the loss of EU funding on protected groups is being assessed by a number of organisations. Early findings suggest that disabled people will be disproportionately affected because, for example, the European Social Fund's priority groups include disability, mental health, older people and carers.<sup>10</sup>
- The Conservative Party 2017 pre-election manifesto committed to introducing a Shared Prosperity Fund to 'use the structural fund money that comes back to the UK to reduce inequalities between communities across our four nations'.<sup>11</sup> The manifesto explains the design of the Fund will be consulted on, 'including with the devolved administrations, local authorities, businesses and public bodies'. However, to ensure the funds are used to reduce inequalities, including for disabled people, the UK Government will need to conduct a rigorous equality and human rights impact assessment, and it will be important that potential beneficiaries of the fund, such as disabled people, are consulted in a meaningful way.
- The Queen's Speech on 21 June highlighted some proposed areas of law reform in England and Wales that have potential implications for CRPD rights, including a review of the mental health legislative landscape; a commitment to bringing forward proposals on social care reform for consultation; proposed legislation to modernise the courts system; and a draft Domestic Violence and Abuse Bill.<sup>12</sup>
- The Scottish Government has announced reviews of law and practice that may significantly affect disabled people: a fundamental review of hate crime legislation, an independent review of legal aid<sup>13</sup> and a proposal for further consultation and possible reform of the Adults with Incapacity (Scotland) Act 2000. In July, the Government published a consultation paper on the socio-economic duty, which it plans to introduce later in 2017.<sup>14</sup> The Social Security (Scotland) Bill was introduced into the Scottish Parliament in June 2017.
- The Welsh Government has announced it is to update its Framework for Action on Independent living,<sup>15</sup> which sets out its vision for implementing the CRPD in Wales.

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<sup>10</sup> See [here](#) [accessed: 27 July 2017]

<sup>11</sup> Conservative Party (2017), 'Forward, Together: Our Plan for a Stronger Britain and a Prosperous Future', p. 35. Available [here](#) [accessed: 27 July 2017]

<sup>12</sup> See [here](#) [accessed: 27 July 2017]

<sup>13</sup> Scottish Government. 2017, *Legal Aid Review* [ONLINE]. Available [here](#) [accessed: 27 July 2017]

<sup>14</sup> Scottish Government (2017), 'Consultation on the Socio-Economic Duty'. Available [here](#) [accessed: 27 July 2017]

<sup>15</sup> Welsh Government (2013), 'Framework for Action on Independent Living'. Available [here](#) [accessed: 27 July 2017]



# Executive summary

In UKIM's view, the UK and devolved governments have not taken all the appropriate steps to progress implementation of the CRPD and have introduced some retrogressive measures that have had a significant negative effect on disabled people. Below, we set out a summary of the key concerns in this report. See the next section (page 9) for a list of UKIM's recommendations.

## **1. Enhancing the status of the CRPD in domestic law and policy (Articles 3, 4) – List of Issues questions 1 and 27**

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The CRPD is not directly incorporated into domestic law, and continued uncertainty about the future of human rights legislation, as well as the UK's planned withdrawal from the European Union, pose risks to disabled people's rights. Clear action plans are needed by the UK and devolved governments to meet CRPD requirements.

## **2. Equality and non-discrimination (Article 5) – List of Issues question 2**

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There are significant gaps in the legal framework providing protection from disability discrimination in GB that need to be addressed. In Northern Ireland there is a lower level of protection from disability discrimination than in the rest of the UK.

## **3. Awareness-raising (Article 8) – List of Issues question 5**

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Negative attitudes persist towards disabled people despite some measures in place.

## **4. Accessibility (Articles 9, 21, 30) – List of Issues questions 6, 17 and 25**

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Despite some improvements, disabled people continue to face difficulties in accessing appropriate housing, the built environment, transport, information and insurance. There is no comprehensive UK-wide accessibility plan(s).

## **5. Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28) – List of Issues questions 4, 14, 16, 22, 23 and 30**

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Disabled people are more likely to live in poverty and material deprivation than people who are not disabled, and continue to be disproportionately affected by a range of social security reforms. Further retrogressive measures have been brought in since the CRPD Committee's Inquiry concluded in 2016.

Increasing demand along with reduced funding for adult social care may be leading to a regression in disabled people's Article 19 rights to live independently in the community.

## **6. Employment (Article 27) – List of Issues questions 20 and 21**

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Disabled people are much less likely to be in employment than non-disabled people. They experience barriers to finding and staying in work, and are on average paid less.

## **7. Access to justice (Articles 13, 12) – List of Issues question 8**

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Disabled people may be prevented from accessing justice on an equal basis with others because of: changes to legal aid in England and Wales; significant increases to court fees in Scotland; the inability of education tribunals to award financial compensation for disability discrimination or harassment and the lack of a formal system of support in Scotland for people with learning disabilities in court.

## **8. Education (Articles 24, 7) – List of Issues question 18**

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Further efforts are needed to achieve an inclusive education system across the UK, and there are higher exclusion rates and lower attainment rates for disabled pupils. Disabled young people face barriers to transitioning from school to further education or employment.

## **9. Health and life (Articles 25, 10) – List of Issues questions 1(f) and 19**

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Disabled people experience health inequalities and barriers to accessing services. People with learning disabilities or autism can be placed in inpatient care inappropriately or stay longer in hospital than other patients. Disabled women experience barriers to equal enjoyment of their reproductive rights.

Mental health services require improvement. Further action is needed to protect the right to life of people using mental health or learning disability services, and to address non-natural deaths in prisons, police custody (and after release) and psychiatric hospitals.

## **10. Freedom from exploitation, violence and abuse (Articles 16, 6) – List of issues questions 3(b), 4(b) and 11**

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Action is needed to address: disability hate crime and high levels of under-reporting; the additional barriers experienced by disabled women seeking support because of violence and abuse; the lack of information collected about disability-motivated bullying in schools; and the abuse of disabled people in institutional settings and home care.

## **11. Autonomy and integrity (Articles 12, 14, 15, 17) – List of Issues questions 9 and 10**

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There are widespread concerns about the extent of physical, mechanical and chemical restraint across a range of settings and the use of long-term segregation. Immigration detention policies need to be changed to align with CRPD requirements. Action is needed to significantly improve access to supported decision-making and to introduce effective safeguards against deprivation of liberty.

## **12. Participation in political and public life (Article 29) – List of issues question 24**

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There are barriers to exercising the right to vote that should be removed, and disabled people continue to be under-represented in political office and public appointments.

## **13. Statistics and data collection (Article 31) – List of Issues question 26**

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There are significant gaps in the collection of disability statistics and limited availability of disaggregated data, which inhibits effective monitoring and reporting of CRPD compliance.

## **14. National implementation and monitoring (Article 33) – List of issues question 29**

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There is insufficient funding provided to the UK Independent Mechanism to allow it to effectively carry out the full range of functions envisaged by the CRPD.

# Recommendations

## 1. Enhancing the status of the CRPD in domestic law and policy (Articles 3, 4) – List of Issues questions 1 and 27

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### 1.1 The CRPD in domestic law and policy

#### UK-wide

1. The UK and devolved governments should incorporate the CRPD into domestic law so individuals can effectively challenge rights violations to secure compliance with CRPD duties using the domestic legal system. This should include:
  - Access to a domestic remedy for alleged breaches of CRPD rights
  - A domestic mechanism to scrutinise policy and legislation to ensure CRPD compliance, and
  - Robust domestic mechanisms to hold decision-makers to account for breaches of the CRPD.

The UK and devolved governments should ensure effective and adequately resourced mechanisms are in place for the active ongoing involvement of disabled people, including children, in the development and review of law, policy and practice.

### 1.2 Human Rights Act

#### UK-wide

2. In light of proposals for changes to the human rights legal framework, the UK and devolved governments should ensure there is no regression in the protection of disabled people's rights, and their access to redress.

### 1.3 Brexit

3. The UK Government should ensure there is no regression in the protection of disabled people's rights as a result of the changes introduced following Brexit.

## 1.4 Action plans

4. The UK and devolved governments should ensure their disability action plans or strategies:
  - Explicitly identify and address gaps in CRPD implementation
  - Include actions to address all recommendations of the CRPD Committee and relevant recommendations of other UN bodies, and
  - Contain clear targets and outcomes as part of adequately resourced delivery plans.

## 2. Equality and non-discrimination (Article 5) – List of Issues question 2

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### 2.1 Gaps in equality legislation

#### UK-wide

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.

#### England

7. As part of its review of the Public Sector Equality Duty, the UK Government should review the specific duties in England and include measures to ensure the involvement of disabled people in decisions that could affect them.

#### Scotland and Wales

8. The Scottish and Welsh Governments should use the new equal opportunities powers to identify changes to promote and protect disabled people's CRPD rights.

#### Northern Ireland

9. The Northern Ireland Executive should accept and act on the proposals of the Equality Commission for Northern Ireland to reform disability equality legislation to address legislative gaps in protection, noting that these proposals better reflect CRPD rights than the Equality Act 2010.

### 3. Awareness-raising (Article 8) – List of Issues question 5

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#### 3.1 Prejudice and negative attitudes

##### UK-wide

10. The UK and devolved governments should:

- Resource long-term positive awareness-raising campaigns, training and education to address prejudice and negative attitudes towards all disabled people, including those with mental health conditions and those claiming social security benefits.
- Ensure that government communications do not fuel prejudicial views, particularly with regard to the rights of disabled people claiming social security benefits.
- Ensure that there is awareness of the CRPD among disabled people, public service providers, and throughout society.

### 4. Accessibility (Articles 9, 21, 30) – List of Issues questions 6, 17 and 25

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#### 4.1 Overall framework

##### UK-wide

11. The UK and devolved governments should adopt action plans that identify barriers to accessibility for disabled people; set time frames with specific accountable deadlines; and provide both human and material resources to fully implement these plans in line with CRPD General Comment 2.

12. 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 and drawing on EU models.

#### 4.2 Housing, the built environment and planning

##### UK-wide

13. The UK and devolved governments should:

- Introduce national targets to ensure that new housing is increasingly accessible or adaptable for disabled people, and
- Ensure the built environment is accessible and allows disabled people to live independently, reviewing and revising the planning framework where necessary.

##### England

#### 14. The UK Government should:

- Review the current planning framework in England to ascertain whether it facilitates compliance with the CRPD obligation to ensure accessibility in relation to housing, particularly in older housing stock.
- Encourage local authorities in England to follow the example of London and use optional Building Regulations to increase the provision of accessible and adaptable housing.

#### **Wales**

#### 15. The Welsh Government should:

- Monitor the implementation of Part 4 of the Housing (Wales) Act 2014 and the Renting Homes (Wales) Act 2016 to ascertain whether they succeed in increasing the supply of, and reducing waiting times for, accessible housing.
- Monitor the impact of housing standards in providing appropriate, accessible housing for disabled people.
- Promote and improve the use of Accessible Housing Registers (AHRs) to match disabled people with accessible or adapted properties more quickly.

#### **Scotland**

16. The Scottish Government should implement the recommendations made by the Independent Housing Adaptations Working Group.

#### **Northern Ireland**

17. The Northern Ireland Executive should implement in full the recommendations of the Inter-Departmental Review of Housing Adaptations Services Final Report and Action Plan 2016.

### **4.3 Transport**

#### **UK-wide**

18. 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.

19. The UK and devolved governments should ensure that all transport and transport infrastructure is accessible to disabled people, and that accessibility is built into planning processes.

20. The UK and devolved governments should ensure that personnel of all public transport providers are equipped with the skills and knowledge to assist disabled passengers.



21. The UK and devolved governments should ensure that all new buses and trains provide accessible real-time travel information.

## **Northern Ireland**

22. The Northern Ireland Executive should commit to resource and fully implement the Accessible Transport Strategy 2025.

## **4.4 Information and communication**

### **UK-wide**

23. The UK and devolved governments should ensure that all communications (including online forms) of public authorities or those of their contracted providers are accessible to disabled people.

24. The UK and devolved governments should take all appropriate steps to ensure barriers to accessing the internet for disabled people are removed.

25. The UK and devolved governments should take appropriate steps to remove barriers to communication between D/deaf and D/deafblind people and their families, carers, education and healthcare staff, and public service providers. This could include support to undertake courses for D/deafblind communication skills.

## **Northern Ireland**

26. The Northern Ireland Executive should implement the commitment to develop a Northern Ireland standard for accessible communications and a disability information hub.

27. The Northern Ireland Executive should adopt and implement the Sign Language Framework.

## **4.5 Insurance**

### **UK-wide**

28. The UK Government should take steps to ensure disabled people have improved access to affordable insurance.

## **5. Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28) – List of Issues questions 4, 14, 16, 22, 23 and 30**

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### **5.1 Poverty, material deprivation and food insecurity**

#### **UK-wide**

29. The UK and devolved governments should examine the factors behind the higher levels of poverty among disabled adults and children and develop strategies to address these factors.

30. The UK and devolved governments should ensure the rights of disabled people including disabled children are prioritised within anti-poverty strategies.

31. The UK Government should act on the findings of the July 2017 Trussell Trust report on food bank use, in particular the conclusion that an inquiry into the support and sufficiency of benefit allowances for disabled people is needed, especially in light of new reforms which may have a further negative impact.

#### **Wales**

32. The Welsh Government should capture data relating to poverty and differences between disabled and non-disabled people in the Welsh Index of Multiple Deprivation.

### **5.2 Impact of social security reforms**

#### **UK-wide**

33. The UK Government 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.

34. In relation to existing social security entitlement and any future reforms, the UK Government should address the UN criteria for non-retrogression to determine whether potentially regressive measures are temporary, necessary, proportionate and non-discriminatory, and that they do not undercut a core minimum level of protection, putting in place any mitigating measures required to safeguard disabled people's rights.

35. The UK Government should revoke the Social Security (Personal Independence Payment) (Amendment) Regulations 2017 to safeguard and promote the rights of people with psychosocial impairments in line with the CRPD.

36. The UK Government should act upon the recommendation of the Work and Pensions Select Committee to set out a clear plan for identifying where new Employment and Support Allowance Work Related Activity Group claimants have additional, unavoidable

living costs relating to their condition, and ensure a financial support package is in place to adequately support all new claimants looking for and moving into work.

37. The UK Government should take swift action to reform the work capability assessment to offer a more flexible, personalised approach to providing support to unemployed disabled people, including those with greatest needs and fluctuating conditions. The focus should be on identifying work potential and the types of adjustments and support that could remove barriers to individuals accessing and staying in work. This should be separate from any financial assessment. Financial support for people unable to work or where there are inadequate adjustments or personalised support in place should not be conditional on actions linked to job-seeking or subject to benefit sanctions.

### **Scotland**

38. The Scottish Government should ensure that Scotland's new social security system:

- Delivers progressive realisation of CRPD rights
- Takes a participatory approach to the development, implementation and monitoring of social security legislation and policy, and
- Is underpinned by the standards and principles of the CRPD.

### **Northern Ireland**

39. The Northern Ireland Executive should consider extending and or/developing the current time-limited package of measures to mitigate any adverse impacts of social security reform.

## **5.3 Independent living funding**

### **England**

40. The UK Government must take steps to ensure compliance with CRPD Article 19 where it has delegated responsibility for independent living funding to local authorities in England.

These steps should include:

- Providing sufficient funding to each local authority to meet the independent living needs of disabled people in their area through mechanisms (such as ring-fencing) that ensure the funding is used for that purpose.
- Providing guidance to local authorities to clarify what they must do to meet the requirements of Article 19, including examples of best practice.
- Putting in place a monitoring mechanism so that each local authority reports on independent living funding and activities, and service-user experience, so the UK Government can assure itself that it is complying with Article 19.

## **Wales**

41. The Welsh Government should ensure that Welsh Independent Living Grant recipients and disabled people with complex care needs receive the care and support they require to live independent lives.

## **Northern Ireland**

42. The Northern Ireland Executive should consider:

- Undertaking research into the extent to which disabled people with substantial needs, who are not existing ILF users, are having their needs met through Self Directed Support and Direct Payments provisions.
- Re-opening the Independent Living Fund to new entrants.

## **5.4 Re-institutionalisation concerns**

### **England**

43. The UK Government should closely monitor the impact of local authority budget reductions on supported living arrangements to ensure there is no regression on disabled people's right to live independently within the community.

44. The UK Government should monitor the impact of NHS-funded Continuing Care policies and ensure there is no regression on disabled people's rights to live independently in the community.

## **5.5 Adult social care and support**

### **UK-wide**

45. 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.

46. 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 CRPD Article 19, read in light of the CRPD Committee's General Comment on this Article.

### **England**

47. The UK Government should monitor the impact of reductions in the availability of local authority-funded adult social care support on disabled people's ability to choose how and where their support is delivered as required by the 'wellbeing principle' in the Care Act 2014. It should take immediate steps to address any adverse impacts identified.

48. The UK Government should monitor the impact of reductions of local services that enable disabled people to stay socially connected within their communities and take steps to address adverse impacts identified.

### **Wales**

49. The Welsh Government should monitor the impact of the Social Services and Well-being (Wales) Act 2014 and ensure it is implemented in a way that progresses CRPD rights.

### **Scotland**

50. The Scottish Government should:

- Incorporate the requirements of Article 19, in line with the CRPD Committee's General Comment on this Article, into all aspects of its proposed reform of adult social care and ensure new models protect and promote disabled people's rights under Article 19.
- Identify whether the introduction of Self-Directed Support (SDS) is resulting in a better quality of life for people, including evidence of the impact on SDS on different groups of disabled people.
- Address issues with SDS funding and service delivery to ensure real choice and support for independent living.

### **Northern Ireland**

51. The Northern Ireland Executive should ensure care in the community arrangements guarantee quality of care, are consistent with the requirements of CRPD Article 19 and take account of CRPD Committee's General Comment on this Article.

## **5.6 Support for carers**

### **UK-wide**

52. 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, and
- Young, sibling and peer carers

## 6. Employment (Article 27) – List of Issues questions 20 and 21

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### 6.1 Employment gap and barriers

#### UK-wide

53. The UK and devolved governments should evaluate how well employment support programmes help disabled people find and stay in work, and take steps to improve their effectiveness. As a first step, the UK Government should act upon the recommendation of the Work and Pensions Committee to publish a Disability Employment Strategy that is seen as a shared, long-term objective and priority across all relevant government departments.

54. The UK Government should:

- Introduce interim targets and a statutory reporting requirement on its commitment to halving the disability employment gap, and
- Report regularly on progress including by impairment group and identify steps if progress is insufficient.

55. 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 for people with sensory impairments specifically.
- Introducing mitigations such as additional funding flexibilities, extending transition arrangements and reviewing the cap level.
- Putting in place a publicity programme for the Access to Work scheme among employers to increase awareness.

56. To help remove barriers to recruitment and retention of disabled people, 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'.

#### Wales

57. The Welsh Government should ensure that supporting disabled people into employment is a target within employment and skills programmes.

## Scotland

58. The Scottish Government should support local authorities and integrated health and social care boards to meet their obligation to provide employment support services under sections 26 and 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

## Northern Ireland

59. The Northern Ireland Executive should commit to allocating the necessary resources to ensure the full implementation of 'Supporting Equality through Inclusive Employment – An Employment Strategy for People with Disabilities', including mainstream funding for supported employment.

## 6.2 Pay gap

### UK-wide

60. The UK and, where relevant, the devolved governments should:

- Monitor the effectiveness of mandatory gender pay gap reporting on closing pay gaps
- Publish statistical information on the scale and trends in disability (in addition to gender) pay gaps for full and part-time workers
- Consult with employers and relevant organisations on extending the statutory requirements to report on gender pay gaps to disability, to encourage employers to consider the scale and causes of all their pay gaps.
- Put in place an action plan for closing the disability pay gap and report regularly on progress.

## 7. Access to justice (Articles 13, 12) – List of Issues question 8

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### 7.1 Legal aid and advice

#### England and Wales

61. The UK Government should:

- Publish the planned post-legislative memorandum on the Legal Aid, Sentencing and Punishment of Offenders Act 2012 without delay
- Conduct a full review of the impact of legal aid reforms on access to justice for disabled people in England and Wales by March 2018, including analysis of what people with legal problems do when they cannot access legal aid. Those responsible



for the review should seek input from disabled people, wider civil society and the EHRC.

- Take concrete steps to mitigate any adverse impacts identified from legal aid changes, including any indirectly discriminatory effects on disabled people.
- Review the impact of budget reductions and legal aid reforms on the availability of legal advice from non-government organisations in England and Wales, and take action to address the problem of ‘advice deserts’.

62. The UK Government should further review the operation of the telephone gateway service (Civil Legal Advice) in England and Wales with regard to its accessibility and effectiveness, particularly for disabled people and parents of children with special educational needs (SEN), and mitigate any adverse impacts.

### **Scotland**

63. The Scottish Government, in deciding how to respond to the findings and recommendations from the independent review of legal aid, must recognise:

- Its obligations under the CRPD and take steps to ensure legal aid policy and practice takes the views of disabled people fully into account and ensures access to appropriate and suitable legal advice and assistance.
- The requirements of the Public Sector Equality Duty and demonstrate that it has had due regard to the need to remove or minimise disadvantage experienced by disabled people in access to justice.

## **7.2 Court and employment tribunal fees**

### **England and Wales**

64. In light of the Supreme Court judgment on employment tribunal fees and the fundamental rights underpinning the Court’s reasoning, the UK Government should not introduce any new barriers to accessing employment tribunals, and should reaffirm its commitment to ensuring equal access to justice for all.

### **Scotland**

65. The Scottish Government should assess and publish the impact of the court fee increases on disabled people and include in this process an up-to-date assessment of disabled people’s access to civil legal aid. The assessments should involve disabled people and take into account their views and experiences. If any negative or disproportionate impact is identified, the Scottish Government should take mitigating action to ensure disabled people are not prevented from access to justice.

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

#### **UK-wide**

66. The UK and devolved governments should take steps to develop capacity-building programmes for the judiciary on:

- The CRPD, including its principles and the jurisprudence of the CRPD Committee, and
- Reasonable adjustments to ensure access to justice for disabled people, through initiatives such as the Equal Treatment Benchbook.

### **7.4 Disability discrimination in schools**

67. The UK should allow education tribunals to award financial compensation for disability discrimination or harassment in schools.

### **7.5 Support and protection in the criminal justice system in Scotland**

68. The Scottish Government should:

- Ensure members of the Crown Office Procurator Fiscal Service have knowledge and experience of learning disability, and develop and promote good practice guidance for staff involved in the assessment of adults' capacity to be competent reliable witnesses.
- Monitor and report on when special measures are used to support disabled people, or not used, and identify the outcomes for disabled people.
- Adopt an agreed police custody model to identify learning disability and make training on learning disability mandatory for police officers and staff working in police custody settings.
- Introduce formal support for the accused and witnesses with learning disabilities during the court process.

## **8. Education (Articles 24, 7) – List of Issues question 18**

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### **8.1 Inclusive education**

#### **UK-wide**

69. The UK, and where relevant devolved, governments should:

- Remove the reservation and interpretive declaration on Article 24, and take concrete steps to progressively realise disabled children's right to inclusive education.

- Renew the 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’.
- Ensure teachers are equipped to teach disabled pupils. Any current education system reforms should be used as an opportunity to put key changes in place.

## **England**

70. The UK Government should conduct a review of England’s SEND Code of Practice within five years of it coming into effect to evaluate whether improvements for disabled pupils are secured in practice.

71. The UK Government should issue guidance to local councils to ensure that the £215 million funding boost for provision for children with SEND is used in a way that is CRPD-compliant and supports the progressive realisation of inclusive education in mainstream schools under CRPD Article 24.

72. In its response to the Lenehan Review into the experiences and outcomes in residential special schools and colleges, the UK Government should place central importance on its obligation to progressively achieve an inclusive education system under CRPD Article 24.

## **Wales**

73. The Welsh Government should:

- Ensure that the implementation of the new system that follows the passing of the Additional Learning Needs Bill is adequately resourced to contribute to closing the educational attainment gaps for disabled pupils.
- Monitor the impact of the measures in the Additional Learning Needs Bill, once enacted, on outcomes for disabled children in light of CRPD standards.

## **Scotland**

74. The Scottish Government should proactively monitor compliance with the statutory accessibility requirements to ensure disabled pupils have access to school buildings, facilities and the curriculum.

## **Northern Ireland**

75. The Department for Education and the Education Authority should ensure that SEN provision effectively meets the needs of children and young people.

## **8.2 School exclusions**

### **UK-wide**

76. 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.

77. 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’.

### **England**

78. The UK Government should ensure head teachers comply with their statutory duties in relation to pupils with SEN: seek early interventions to address underlying causes of disruptive behaviour; assess the suitability of existing provision; and avoid, as far as possible, permanently excluding pupils.

## **8.3 Transition from school**

### **UK-wide**

79. 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.

### **Wales**

80. The Welsh Government should consider ways to improve the participation and progression rates of disabled people in apprenticeships.

## **8.4 Access to higher education**

### **England**

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

### **Wales**

82. The Welsh Government should implement the recommendations of the Diamond Review of higher education funding with regard to disabled students, in order to remove barriers to education and improve attainment levels.

## **8.5 Additional support for learning (ASL) – children’s right to appeal in Scotland**

83. The Scottish Government should apply the presumption of legal capacity from age 12 to ASL, recognise and take action to prevent education authorities from being placed in a conflict of interest situation and ensure disabled children have the necessary support to allow them to exercise their legal capacity.

## **8.6 Educational attainment**

### **UK-wide**

84. 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.

## **9. Health and life (Articles 25, 10) – List of Issues questions 1(f) and 19**

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### **9.1 Health inequalities**

#### **UK**

85. 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.

#### **England**

86. The UK Government should ensure that NHS England undertakes a comprehensive mental health mortality review to identify the reasons why people with mental health conditions often die prematurely. It should also identify improvements in clinical practice and wider support that will protect the health and lives of people with mental health conditions.

#### **Scotland**

87. The Scottish Government should implement the Mental Welfare Commission recommendation to ensure that mental health services facilitate patients having physical health checks at least every 15 months and access to relevant screening programmes.

#### **Wales**

88. The Welsh Government should:

- Ensure access to health services for learning disabled people and the uptake of annual health checks continue to be monitored and evaluated, including geographic variations across Wales.
- Establish programmes to improve accessible information and health literacy for people with learning disabilities.

## **9.2 Access to and quality of mental healthcare services**

### **UK-wide**

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

90. 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 investing in child and adolescent mental health services; and developing strategies with clear time frames, targets, measurable indicators, effective monitoring mechanisms and sufficient human, technical and financial resources.

### **England**

91. The UK Government should implement the recommendations of the Independent Mental Health Taskforce in full.

### **Scotland**

92. The Scottish Government should:

- Establish a root and branch review of the support offered to people with mental health conditions, to be carried out by an independent Commission of enquiry, underpinned by CRPD standards.
- Investigate and publish the reasons why mental health waiting time targets are not being met and take action to ensure there is timely access to psychological therapies close to home across all Health Boards.
- Ensure psychiatric facilities provide an appropriate therapeutic environment.
- Carry out an audit of specialist services for individuals with highly complex needs to ensure their needs are appropriately met.

### **Northern Ireland**

93. The Northern Ireland Executive should expedite the production and publication of 'Protect Life 2' and ensure the strategy is appropriately resourced to ensure individuals

experiencing mental health conditions can access appropriate treatments and services to ensure their rehabilitation.

### **9.3 Sexual and reproductive health**

#### **UK-wide**

94. The UK and devolved governments should take steps to ensure that disabled women can access mainstream sexual and reproductive healthcare and maternity services on an equal basis with others. This should include ensuring that all staff providing sexual health services receive disability rights and awareness training, and ascertaining the need for specialist services.

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

#### **UK-wide**

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

- Can access community-based services to avoid involuntary placement in psychiatric hospitals, assessment and treatment units, or general acute wards. This includes ensuring that sufficient community-based provision is in place.
- Remain in 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 are 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.

### **9.5 Inappropriate use of 'Do Not Resuscitate' orders**

#### **UK-wide**

96. The UK and devolved governments 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.
- Healthcare professionals are consulting with patients when making a clinical decision as to whether cardio-pulmonary resuscitation is withheld and recording reasons where consultation has not taken place.



- Where there is evidence of inappropriate use of notices, 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.

## **9.6 Investigating deaths in learning disability or mental health services**

### **England**

97. The UK Government should provide a comprehensive update on actions taken in response to the CQC's report into the way NHS Trusts review and investigate the deaths of patients in England, including an update in relation to people with learning disabilities and mental health conditions. The update should set out how progress is being monitored, and what steps will be taken where progress is insufficient.

### **Scotland**

98. The Scottish Government should ensure that all deaths in mental health settings are investigated and implement any recommendations resulting from these investigations.

## **9.7 Non-natural deaths in detention and post-custody in England and Wales**

### **England and Wales**

99. The UK Government should implement all outstanding recommendations from the EHRC's inquiry into non-natural deaths of people with mental health conditions in detention in England and Wales, and its report on deaths upon release from police custody. In particular, action is needed to:

- Address the root causes leading to the high levels of non-natural deaths in prisons, including greater access to specialist mental healthcare.
- Ensure that independent investigations and learning from the non-natural deaths of patients in psychiatric hospitals are in fact taking place so that practice improves throughout the system.

## 10. Freedom from exploitation, violence and abuse (Articles 16, 6) – List of issues questions 3(b), 4(b) and 11

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

#### UK-wide

100. 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.

101. The UK and devolved governments should employ consistent data collection methods across countries, the criminal justice system and within individual agencies to allow comparative and chronological analysis.

#### England and Wales

102. The UK Government should:

- Undertake a full-scale review of aggravated offences and sentencing provision in England and Wales without delay, and monitor the use of sentencing guidelines to assess sentencing consistency.
- Conduct a review of the provision of third-party reporting of hate crime in England and Wales; evaluate the impact and sustainability of provision; highlight geographical and thematic gaps; and ensure third party and police recording systems are consistent.
- Ensure the police, Crown Prosecution Service and probation services adopt and publish a single, clear definition of a disability hate crime and communicate it effectively to the public and staff.

#### Scotland

103. The Scottish Government should implement the recommendations of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion.

### 10.2 Bullying in schools

#### UK-wide

104. 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.

### **10.3 Violence against disabled women**

105. With reference to CRPD General Comment No. 3 on Article 6, the UK and devolved governments should take all necessary steps to ensure initiatives to address domestic and sexual violence and forced marriage effectively assist disabled victims, including adequately funded support services and sufficient legal protection

106. The UK and devolved governments should make the necessary law, policy and practice changes to be able to ratify the Istanbul Convention and, once it is ratified, dedicate sufficient resources to central, devolved and local authorities to ensure its effective implementation.

### **10.4 Abuse in institutional settings and home care**

#### **UK-wide**

107. The UK and devolved governments should strengthen measures to prevent abuse in institutional settings and home care, including sexual and financial abuse, of disabled people, in particular disabled children, people with learning disabilities, and disabled older people. This should include ensuring that care costs are assessed with service users' human rights in mind, including their CRPD rights, and that the findings of the most recent investigations and inspections are acted on without delay.

#### **Northern Ireland**

108. The Northern Ireland Executive should ensure the criminal law framework is sufficiently robust to address circumstances in which an individual, in particular a carer, mistreats or wilfully neglects a disabled person.

## **11. Autonomy and integrity (Articles 12, 14, 15, 17) – List of Issues questions 9 and 10**

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### **11.1 The use of restraint**

#### **UK-wide**

109. The UK and devolved governments should ensure evidence on the extent of the use of physical, mechanical and chemical restraint, and segregation and seclusion, is routinely published in relation to: prisons; the youth justice system; health and care settings; and education settings.

110. 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:

- A commitment to achieving a shared understanding and consistent human rights approach across all government regulators, inspectorates and ombudsmen.
- 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 force or chemical restraint does not lead to increases in other restrictive practices which threaten human rights, such as segregation and isolation.

### **England and Wales**

111. The UK Government should act upon all outstanding recommendations in relation to restraint from the EHRC's inquiry into the non-natural deaths of adults with mental health conditions in state detention and the 2016 progress review, including:

- The Ministry of Justice should routinely publish data on the use of restraint in prisons to aid transparency and accountability.
- Segregation should not be used for prisoners with mental health conditions, unless there is an exceptional circumstance, which is clearly defined and understood by prison staff.
- Ensuring that the Independent Advisory Panel's principles for safer restraint are fully acknowledged in the three settings and beyond, with a focus on the youth justice secure estate.

112. The UK Government should evaluate the extent to which its new guidance on restraint is followed in practice, including 'Positive and Proactive Care' and the NHS England guidance on chemical restraint.

113. The UK Government should ensure that good practice on reducing the use of restraint identified by the CQC in mental health services is communicated to and used consistently across all units, and that lessons are shared in all settings where disabled people are detained.

## **11.2 Immigration detention**

### **UK-wide**

114. The UK Government should:

- Use immigration detention only as a last resort, cease the detention of vulnerable people, and set a statutory time limit of 28 days for immigration detention.
- Ensure that, where it detains people who may require support to exercise their legal capacity, independent support is provided to allow them to assert their legal right to challenge their immigration detention.

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

### **UK-wide**

115. The UK and devolved governments should take immediate steps to introduce and strengthen provision for supported decision-making, and ensure compliance of mental capacity/incapacity legislation with Article 12 CRPD.

### **England and Wales**

116. The UK Government should increase the scope of supported decision-making in England and Wales, and put in place safeguards to enable the removal of a supporter if they are not acting in accordance with a disabled person's will and preferences. As initial steps, the UK Government should respond to the Law Commission's draft Bill on reform of the Mental Capacity Act 2005, setting out how it intends to give consideration to CRPD Articles 12 and 14, and in its proposed mental health law reform.

### **Scotland**

117. The Scottish Government should:

- Address gaps in advocacy provision.
- Ensure patients are routinely involved in decision-making about their treatment and care planning.
- Urgently carry out a comprehensive review of legislation governing non-consensual care and treatment and ensure the new provisions reflect a supported decision-making framework.

### **Northern Ireland**

118. The Northern Ireland Executive should ensure the positive provisions of the Mental Capacity (NI) Act 2016 requiring provision of support to disabled people who may require

assistance to take decisions themselves are effectively implemented and that substitute decision making is limited.

## **11.4 Deprivation of liberty**

### **UK-wide**

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

### **Scotland**

120. The Scottish Government should implement the recommendations from the scoping study about the review of the inclusion of learning disability and autism in the Mental Health (Scotland) Act 2003.

## **12. Participation in political and public life (Article 29) – List of issues question 24**

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### **12.1 Voting**

#### **UK-wide**

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

### **12.2 Elected representatives**

#### **UK-wide**

122. 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.

#### **GB**

123. The UK Government should commence section 106 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 the barriers to selection faced by disabled people.

#### **Wales**

124. The Welsh Government should build on current initiatives to remove barriers and build confidence amongst disabled people interested in standing for elected office and to support newly elected councillors in their first term of office.

### **12.3 Public appointments**

#### **UK-wide**

125. The UK and devolved governments should take steps to promote representation of disabled people on boards of public bodies, for example through mentoring, coaching and training measures, and to monitor and report on progress.

## **13. Statistics and data collection (Article 31) – List of Issues question 26**

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### **13.1 Data gaps and lack of disaggregated data**

#### **UK-wide**

126. 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.

127. The UK Government should include questions on long-term health conditions or disabilities, including type of impairment, in the 2021 censuses.

128. 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.

#### **Northern Ireland**

129. The Northern Ireland Executive should implement the commitment to a data development agenda in the draft Delivery Plan for Programme for Government Indicator 42, 'Average life satisfaction score of people with disabilities', in accordance with the requirements of Article 31 of the CRPD.

## 14. National implementation and monitoring (Article 33) – List of Issues question 29

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### 14.1 Independent Mechanism

#### UK-wide

130. Taking into account the CRPD Committee guidance on Independent Mechanisms, the UK and devolved governments, should review the allocation of resources to ensure:

- Sufficient funding for the UK Independent Monitoring Mechanism to meet its functions, including effective involvement of disabled people.
- The effective involvement of disabled people in the monitoring and reporting of the implementation of the Convention.



# Disability rights in the UK: UK Independent Mechanism updated submission to the UN Committee on the Rights of Persons with Disabilities ahead of the public examination of the UK's implementation of the UN CRPD

## 1. Enhancing the status of the CRPD in domestic law and policy (Articles 3, 4) – List of Issues questions 1 and 27

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### 1.1 The CRPD in domestic law and policy

11. The UK and devolved governments have not directly incorporated the CRPD into domestic law. There is no explicit requirement for Ministers to consider their international obligations under the CRPD when developing new policy and law, or any domestic mechanism to hold them to account for failing to do so.<sup>16</sup>

12. UK Government policy is to 'consider the full range of people affected by proposed policies and ensure that disabled people can access any consultation'.<sup>17</sup> However, this approach does not guarantee that disabled people will be involved in decision-making.

### 1.2 Human Rights Act

13. UKIM continues to be concerned about the UK Government's commitment to bring forward proposals on a British Bill of Rights to replace the Human Rights Act (HRA).<sup>18</sup>

14. The UK Government has stated that it will 'consider the human rights legal framework' once the UK has exited the European Union.<sup>19</sup> Election promises to change human rights

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<sup>16</sup> UKIM (2017), 'Disability Rights in the UK', pp. 10-11. Available [here](#) [accessed: 27 July 2017]. Hereafter referred to as: UKIM (2017), 'Disability Rights in the UK'.

<sup>17</sup> List of Issues in relation to the initial report of the United Kingdom of Great Britain and Northern Ireland: government response, para 8, p. 3. Available [here](#) [accessed: 27 July 2017]

<sup>18</sup> UKIM (2017), 'Disability Rights in the UK', p. 12.

<sup>19</sup> Conservative Party (2017), 'Forward, together: Our plan for a stronger Britain and a prosperous future'. Available [here](#) [accessed: 27 July 2017]

laws, which the Government claims prevent it from tackling terrorism,<sup>20</sup> also create uncertainty for the future of human rights legislation.

15. UKIM maintains its position that the HRA provides essential protection to everyone in the UK, including some important protections for disabled people's CRPD rights.<sup>21</sup> Changing it would have significant social and constitutional consequences, and should only be considered as part of a broad and participative process that advances human rights protections.<sup>22</sup>

### 1.3 Brexit

16. The risk that the UK's planned withdrawal from the European Union may remove or restrict the rights of disabled people continues to be of serious concern to UKIM.<sup>23</sup>

### 1.4 Action plans

17. While there are some government strategies and action plans for disabled people **across the UK**, UKIM is not aware that the UK or devolved governments have given adequate consideration of where current law, policy and practice falls short of CRPD compliance, and where progress is needed.<sup>24</sup> There are concerns in Northern Ireland that the Executive's disability strategy has failed to deliver.<sup>25</sup>

18. Since February 2017:

- There has been no update on the future of the UK Government's 'Fulfilling Potential' strategy and action plan, primarily relevant to **England**, since an annual progress report published in November 2015.<sup>26</sup>

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<sup>20</sup> BBC NEWS. 2017. *Theresa May: Human rights laws could change for terror fight*. [ONLINE]. 7 June. Available [here](#) [accessed: 27 July 2017]

<sup>21</sup> The human rights of disabled people under the European Convention on Human Rights (ECHR) are interpreted using the CRPD in an increasing number of cases determined by the European Court of Human Rights (ECtHR) concerning claims that the Convention rights of disabled people have been violated. That case law, in turn, influences the domestic courts when are interpreting rights under the Human Rights Act 1998. Although not directly enforceable in the UK at this point in time, the CRPD has become an important aid to interpretation for the ECtHR and the domestic courts when considering and giving effect to disabled people's human rights, protecting and advancing the right to independent living and the provision of support disabled people require to realise this right in practice. See for instance the following judgements: [Burnip v Birmingham City Council & Anor \(Rev 1\)](#) [2012] EWCA Civ 629; [Bracking v Secretary of State for Work and Pensions](#) [2013] EWCA Civ 1345; [P v Cheshire West and Chester Council and another; P and Q v Surrey County Council](#) [2014] UKSC 19

<sup>22</sup> UKIM (2017), 'Disability Rights in the UK', p. 12.

<sup>23</sup> *Ibid.*, p. 13.

<sup>24</sup> *Ibid.*, p. 14.

<sup>25</sup> NIHRC and ECNI (2017), 'Disability Rights in Northern Ireland', p. 5. Available [here](#) [accessed: 27 July 2017]

<sup>26</sup> Department for Work and Pensions and Office for Disability Issues (2015), 'Fulfilling Potential: outcomes and indicators framework: second annual progress report'. Available [here](#) [accessed: 27 July 2017]

- The Welsh Government's Framework for Action on Independent Living,<sup>27</sup> which sets out its vision for implementing the CRPD in **Wales**, is currently being 'refreshed'. The EHRC welcomes the refresh exercise and efforts to engage disabled people and their organisations in the process.<sup>28</sup>
- The **Northern Ireland** Executive Disability Strategy lapsed on 31 March 2017.<sup>29</sup> Work is underway to develop a series of actions under the draft delivery plan for Programme for Government.<sup>30</sup> The Independent Mechanism for Northern Ireland (IMNI) is concerned that the CRPD and relevant Concluding Observations of other treaty bodies are not specifically mentioned, and that the plan lacks significant detail and is described as a 'broad commitment to improvement' with the pace of delivery 'determined by the resource available'.<sup>31</sup>

19. The UK and devolved governments have not set out plans for implementing the 2016 Concluding Observations of the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights, many of which are relevant to disabled people.<sup>32</sup>

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<sup>27</sup> Welsh Government (2013), 'Framework for Action on Independent Living'. Available [here](#) [accessed: 27 July 2017]

<sup>28</sup> via a steering group involving civil society organisations.

<sup>29</sup> Department for Communities. 2015. Press release: The Executive has a strategy to improve the lives of disabled people. [ONLINE]. Available [here](#) [accessed: 27 July 2017]

<sup>30</sup> Northern Ireland Executive (2017), 'Draft Delivery Plan for Programme for Government Indicator 42, Average life satisfaction score of people with disabilities'. Available [here](#) [accessed: 27 July 2017]

<sup>31</sup> ECNI (2017), 'Response to PfG delivery plan - Government indicator 42', para 10a; Department for Communities (2016), 'Draft delivery plan for programme for Government Indicator 42, Average life satisfaction score of people with disabilities', paras 1.8 and 4.2. Available [here](#) [accessed: 27 July 2017]

<sup>32</sup> The UK Government has indicated that it does not intend to pre-empt its next State report to the UN Committee on Economic, Social and Cultural Rights in 2020, by setting out what it will do to implement Concluding Observations issued by that Committee in 2016. See [here](#) [accessed: 27 July 2017] The UK Government has also failed to say how it will implement the 2016 Concluding Observations of the Committee on the Rights of the Child, although we welcome a framework of actions for general measures on the Convention on the Rights of the Child (CRC) that has been set out by the former Minister for Children. See [here](#) [accessed: 27 July 2017].

The Welsh Government has stated its commitment to improving children's rights in relation to the CRC Concluding Observations. See [here](#) [accessed: 27 July 2017]

## 2. Equality and non-discrimination (Article 5) – List of Issues question 2

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### 2.1 Gaps in equality legislation

20. The Equality Act 2010 (EA 2010) provides protection across **Great Britain** from various forms of disability discrimination in areas such as work, the provision of goods and services, education and premises. However:

- Some EA 2010 provisions are not in force, including the socio-economic duty (sections 1-3), dual discrimination (section 14) and the duty to make reasonable adjustments to the common parts of residential properties (sections 36-37)<sup>33</sup>
- There are a number of significant gaps in protection.<sup>34</sup>

21. On 6 April 2017, sections 165 and 167 of the EA 2010 were implemented with the effect that taxi and private hire vehicle drivers in **England, Wales and Scotland** are now obliged by law to: transport wheelchair users in their wheelchair; provide passengers in wheelchairs with appropriate assistance; and charge wheelchair users the same as non-wheelchair users.<sup>35</sup> While this is a welcome development, without implementation of the other EA 2010 taxi provisions it may not make a difference in practice for many disabled people.<sup>36</sup>

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<sup>33</sup> UKIM (2017), 'Disability Rights in the UK', pp. 15-16. The other provisions not yet in force or repealed are the caste discrimination – regulations under section 9 (5); 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 and 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, (Chapter 1 of Part 12); the requirement for political parties to report on diversity of candidates – section 106; the employment tribunal power to make wider recommendations (repealed); third party harassment provisions (repealed); discrimination and equal pay questionnaire procedure - s138 Equality Act 2010 (repealed).

<sup>34</sup> Ibid., p. 15. 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.

<sup>35</sup> Taxi drivers face a fine of up to £1,000 if they refuse to transport wheelchair users or attempt to charge extra.

<sup>36</sup> EHRC (2016), 'Response to the report of the House of Lords Select Committee on the Equality Act 2010 and Disability: the impact on disabled people', para 29. Available [here](#) [accessed: 27 July 2017]. '29... Implementing only s165 (passengers in wheelchairs) may lead to a perception that all drivers will be covered. This is not the case because s165 would impose duties only on the drivers of taxis or mini cabs who are 'designated' by the licensing authority (the local authority), and therefore required to assist a wheelchair user. Drivers of vehicles that are not designated by the licensing authority are not covered. The provisions under s167 provide for a local authority to keep a list of accessible vehicles. However, this is optional. 30. The provisions under s167 cover accessibility requirements, which include allowing passengers to stay in their wheelchairs when travelling in a taxi as well as allowing them to choose to get out of their wheelchair and be assisted by the driver. However, implementing s167 only would not guarantee improved accessibility without making regulations under s160 and s163-4 which would set out requirements for vehicles to be accessible. Without those sections being implemented, for example, the duty to assist a wheelchair user would not cover drivers with saloon cars...'

22. The Public Sector Equality Duty (PSED)<sup>37</sup> specific duties in **England** are far less extensive than those in Wales and Scotland.<sup>38</sup> In particular, they do not include a duty to involve disabled people in decisions that could affect them.<sup>39</sup> This is especially relevant in light of a planned review of the PSED by the UK Government, the timeline for which is yet to be confirmed.

23. The power to introduce the EA 2010 socio-economic duty has been devolved to the National Assembly for Wales<sup>40</sup> and the Scottish Parliament. The Scottish Government intends to be the first country in the UK to introduce the duty, towards the end of 2017.<sup>41</sup> In both Scotland and Wales further powers have also been devolved that provide both the devolved parliaments with an opportunity to introduce protections, including for disabled people, that supplement but do not modify the existing provisions of the EA 2010 in relation to devolved public authorities and the devolved functions of cross-border authorities.<sup>42</sup> These new legislative powers offer further opportunities to promote equality and tackle poverty in Scotland and Wales.

24. There is a greater level of protection for disabled people in GB than in **Northern Ireland**, where the Disability Discrimination Act 1995 still applies, and the EA 2010 does not.<sup>43</sup>

25. The IMNI<sup>44</sup> has called on the Northern Ireland Executive to make changes<sup>45</sup> to disability equality legislation in **Northern Ireland** so as to, at minimum, keep pace with positive legislative changes in GB,<sup>46</sup> and provide for redress against multiple discrimination.<sup>47</sup> There is no evidence in the public domain that progress is being made to realise the commitment

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<sup>37</sup> The Public Sector Equality Duty (the general duty) – as applied to the protected characteristic of disability – requires that public authorities have due regard to the need to: eliminate disability discrimination, harassment and victimisation; advance equality of opportunity for disabled people and non-disabled people; and foster good relations between disabled people and non-disabled people. The general duty is supported by specific duties, which aim to enable public authorities to improve performance on the general duty, and are different across Great Britain.

<sup>38</sup> EHRC (2017), 'Disability Rights in England', pp. 9-10. Available [here](#) [accessed: 27 July 2017]

<sup>39</sup> Ibid. A range of stakeholders have raised this issue.

<sup>40</sup> The Wales Act 2017 devolved the power to commence the EA 2010 socio-economic duty to the National Assembly for Wales. See [here](#) [accessed: 27 July 2017]:

<sup>41</sup> Scottish Government (2017), 'Consultation on the Socio-Economic Duty'. Available [here](#) [accessed: 27 July 2017]

<sup>42</sup> Section L2 in Part 2 of Schedule 5 of the Scotland Act 1998 as amended by the Scotland Act 2016.

<sup>43</sup> UKIM (2017), 'Disability Rights in the UK', p. 15 and NIHRC and ECNI (2017), 'Disability Rights in Northern Ireland', p. 6. Available [here](#) [accessed: 27 July 2017]

<sup>44</sup> Comprising the NIHRC and the ECNI.

<sup>45</sup> ECNI (2012), 'Strengthening Protection for Disabled People Proposals for Reform'. Available [here](#) [accessed: 27 July 2017]. See also [here](#) [accessed: 27 July 2017]

<sup>46</sup> These include remedies against perceived and associative discrimination and indirect discrimination.

<sup>47</sup> ECNI (2004), 'Response to OFMDFM Consultation Paper, "A Single Equality Bill for Northern Ireland"'. Available [here](#) [accessed: 27 July 2017]

to consider limited legislative reform by September 2017, as committed to by the Northern Ireland Executive.<sup>48</sup>

### 3. Awareness-raising (Article 8) – List of Issues question 5

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#### 3.1 Prejudice and negative attitudes

26. There is evidence of persisting negative attitudes towards disabled people, particularly those claiming social security benefits,<sup>49</sup> despite some commitments and measures in place.<sup>50</sup>

### 4. Accessibility (Articles 9, 21, 30) – List of Issues questions 6, 17 and 25

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#### 4.1 Overall framework

27. There is no comprehensive **UK-wide** accessibility plan(s) as required by the CRPD General Comment on Accessibility,<sup>51</sup> and Brexit may mean that the proposed European Accessibility Act<sup>52</sup> will not be implemented into UK law.<sup>53</sup>

#### 4.2 Housing, the built environment and planning

28. There is a shortage of accessible and adaptable housing for disabled people across **GB**,<sup>54</sup> as well as barriers to accessing the built environment, including leisure and sporting facilities.<sup>55</sup>

29. There are gaps in the legal and policy framework for accessible housing, including the fact that the EA 2010 duty to make reasonable adjustments to the physical features of the common parts of buildings is not yet in force across **GB**.<sup>56 57</sup>

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<sup>48</sup> The Northern Ireland Executive (2016), 'Draft Delivery Plan for Programme for Government Indicator 42, Average life satisfaction score of people with disabilities', p. 6. Available [here](#) [accessed: 27 July 2017]

<sup>49</sup> UKIM (2017), 'Disability Rights in the UK', p. 16: including section 149 of the EA 2010; the 'Fulfilling Potential: making it happen' strategy and action plan.

<sup>50</sup> Ibid., p.16. The UK Government's reply to the List of Issues also outlines some initiatives in paras 39-40.

<sup>51</sup> Ibid., p. 17.

<sup>52</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.

<sup>53</sup> UKIM (2017) 'Disability Rights in the UK', p. 17.

<sup>54</sup> Ibid., p. 18; EHRC (2017), 'Disability Rights in England', pp. 11-12; EHRC (2017), 'Disability Rights in Wales', p. 11; EHRC and SHRC (2017), 'Disability Rights in Scotland', p. 9

<sup>55</sup> Ibid., p. 18.

<sup>56</sup> EHRC (2017), 'Disability Rights in England', p. 12.

<sup>57</sup> Equality Act 2010, s36(1)(d), s36(5), s36(6), Sched 4, paras 5–7, para 8(1) insofar as it relates to a disabled person who is entitled to occupy premises other than as a tenant or a unit-holder. It would apply throughout Great Britain.



30. A UK parliamentary inquiry report published in April 2017<sup>58</sup> confirmed and underlined the concerns raised in UKIM's February 2017 submission about the serious lack of accessible homes and increasingly inaccessible public spaces.<sup>59</sup>

31. In relation to **England**, the EHRC has recommended local authorities adopt the good practice approach of the altered London Plan.<sup>60</sup>

32. If implemented and promoted effectively, there are a number of initiatives that could improve housing for disabled people in **Wales**, including:

- Measures in Part 4 of the Housing (Wales) Act 2014 and Renting Homes (Wales) Act 2016, as well as the Welsh Housing Quality Standard
- Accessible Housing Registers to match people to accessible homes.<sup>61</sup>

33. Disabled people in **Scotland** often find it difficult to get adaptations made to their homes, and the Scottish Government has not implemented the recommendations made by the Independent Housing Adaptations Working Group.<sup>62</sup>

34. A 2017 ECNI statement reported that many disabled people in **Northern Ireland** live in homes that are inadequate for their disability-related needs.<sup>63</sup> It is therefore imperative that the Inter-Departmental Review of Housing Adaptations Services Final Report and Action Plan 2016 are fully resourced and implemented.<sup>64</sup>

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<sup>58</sup> Women and Equalities Committee (2017), 'Building for Equality: Disability and the Built Environment, Ninth Report of Session 2016-17'. Available [here](#) [accessed: 27 July 2017]

<sup>59</sup> Ibid., pp. 5-7: over 160 written submissions were received from a range of contributors, including individual disabled people and their organisations, and there were four oral evidence sessions. Examples of issues highlighted by witnesses to the inquiry included: an inadequate supply of accessible homes; public and commercial buildings without step-free access, or with poor signage; workplaces people couldn't get into; failures to install or maintain hearing loops; sports halls with surfaces unsuitable for wheelchair sports; failures to exempt assistance dogs from bans on dogs in public parks.

<sup>60</sup> EHRC (2017), 'Disability Rights in England', p. 12. Available [here](#) [accessed: 27 July 2017]: The altered London Plan requires 90 per cent of all new-build housing to be built to the new optional building regulation standard M4(2) accessible and adaptable dwellings, and 10 per cent to be wheelchair accessible or wheelchair adaptable dwellings[M4(3)].

<sup>61</sup> EHRC (2017), 'Disability Rights in Wales', pp. 11-12. Available [here](#) [accessed: 27 July 2017]

<sup>62</sup> EHRC and SHRC (2017), 'Disability Rights in Scotland', p. 9. Available [here](#) [accessed: 27 July 2017]

<sup>63</sup> ECNI (2017), 'Statement on key inequalities in housing'. Available [here](#) [accessed 27 July 2017]: nearly a fifth of those who did not have adaptations to their homes did have a requirement for modifications or adaptations and most of those eligible for a private sector Disabled Facilities Grant, or a public sector Disabled Adaptations Grant, to make necessary modifications or adaptations to their homes had never applied for one.

<sup>64</sup> Department for Social Development and Department for Health, Social Services and Public Safety (2016), 'Inter-Departmental Review of Housing Adaptations Services Final Report and Action Plan 2016'. Available [here](#) [accessed: 27 July 2017]

35. A 2016 survey of provision<sup>65</sup> at entertainment venues in **Northern Ireland** for people with mobility, hearing and vision impairments found widespread evidence of barriers to access.<sup>66</sup>

### 4.3 Transport

36. Despite some progress<sup>67</sup> on accessibility of transport, UKIM is concerned about the continuing barriers to accessing rail, bus and taxi services **across the UK**.<sup>68</sup>

37. There is a lack of real-time information available to people with sensory impairments on trains and buses.<sup>69</sup> An amendment to the Bus Services Bill, which became the Bus Services Act in April 2017, adds a regulation-making power under the EA 2010 to require accessible information on buses. While this is a step in the right direction, it does not directly require accessible information to be provided.<sup>70</sup>

38. There are a number of accessibility problems in **Northern Ireland**. A 2015 survey found that 30 per cent of disabled people stated that difficulties getting on or off vehicles prevented them from using public transport, compared with four per cent of non-disabled people.<sup>71</sup>

39. In **Northern Ireland**, the Executive has committed to<sup>72</sup> supporting the delivery of the Accessible Transport strategy 2025.<sup>73</sup>

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<sup>65</sup> including staff training, information provision and seating availability.

<sup>66</sup> Data Detail (2016), 'Access denied: Shortfalls revealed in disability provision at venues across Northern Ireland'. Available [here](#) [accessed: 27 July 2017]

<sup>67</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: 27 July 2017].

As noted in paragraph 22 above, it is welcome that sections 165 and 167 of the EA 2010 have been brought into force from 6 April 2017 in **England, Wales and Scotland**, but other provisions need to be implemented to make a difference in practice for disabled people seeking to access taxis.

<sup>68</sup> UKIM (2017), 'Disability Rights in the UK', pp. 18-20.

<sup>69</sup> *Ibid.*, p. 20.

<sup>70</sup> The Bus Services Act 2017 adds a regulation-making power under the Equality Act 2010 to require accessible information – notably audio-visual announcements – on buses, backed by statutory guidance. However, no date has been set for ss.181A - D Equality Act 2010 to be brought into force (applicable to England, Wales, and Scotland). While the addition of these sections is a welcome development, the amendment merely confers a discretionary power on the Secretary of State to order, rather than itself directly requiring, that all buses must include such information.

<sup>71</sup> Department for Regional Development and the Northern Ireland Statistics and Research Agency (2016), 'Attitudes of Disabled and Older People to Public Transport, November 2014- January 2015', p. 17. Available [here](#) [accessed: 27 July 2017]

<sup>72</sup> Northern Ireland Executive (2017), 'Delivery Plan for Programme for Government Indicator 42, Average life satisfaction score of people with disabilities', p. 13. Available [here](#) [accessed: 27 July 2017]

<sup>73</sup> Department for Infrastructure (2017), 'Accessible Transport Strategy 2025'. Available [here](#) [accessed: 27 July 2017]. The final strategy has not yet been signed off and published in the absence of the Northern Ireland Executive.



#### 4.4 Information and communication

40. Disabled people continue to experience barriers in accessing information and are more likely to have never used the internet.<sup>74</sup> There are also issues with digital accessibility and the inaccessibility of some government websites.

41. The EHRC has welcomed the NHS England mandatory 'Accessible Information Standard' adopted in 2016 in **England**.<sup>75</sup> We also welcome the recent publication of a post-implementation review of the Standard in July 2017.<sup>76</sup> This review highlighted widespread support for the Standard and evidence of its benefits to date, but also pointed to some weaknesses including variable compliance, lack of awareness and lack of staff time, which will need to inform revisions to the Specification and Implementation Guidance for the Standard.

42. Evidence indicates that further work is needed to ensure that the All Wales Standards for communication and information for people with sensory loss, applicable to all health services in Wales, are effectively implemented.<sup>77</sup>

43. The **Northern Ireland** Executive has committed to developing a standard for accessible communications and a disability information hub that will be a central point for information access.<sup>78</sup>

44. D/deaf and D/deafblind communities are often unable to access both public and private services because of a lack of good quality sign language interpreters, and there is a failure to translate information into sign language or subtitles, as well a lack of sign language courses **across the UK**.<sup>79</sup>

45. In 2016, the Department for Cultural Arts and Leisure in **Northern Ireland** issued a consultation on a draft Sign Language Framework<sup>80</sup> that included proposals for draft legislation to safeguard Irish Sign Language/British Sign Language users' rights.<sup>81</sup>

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<sup>74</sup> UKIM (2017), 'Disability Rights in the UK', p. 20. Also see: EHRC (2017) Disability Rights in Wales, p. 13: 70 per cent of disabled adults (aged 16+) lived in households with internet access, compared with 89 per cent of non-disabled households.

<sup>75</sup> Ibid., p. 21

<sup>76</sup> NHS England (2017), 'Accessible information standard: Post-implementation review – report'. Available [here](#) [accessed: 28 July 2017]

<sup>77</sup> EHRC (2017), 'Disability Rights in Wales', p. 13. Available [here](#) [accessed: 27 July 2017]

<sup>78</sup> Northern Ireland Executive (2017), 'Delivery Plan for Programme for Government Indicator 42, Average life satisfaction score of people with disabilities', p. 15. Available [here](#) [accessed: 27 July 2017]

<sup>79</sup> UKIM (2017), 'Disability Rights in the UK', p. 22.

<sup>80</sup> Department of Culture, Arts and Leisure (2016), 'Sign Language Framework'. Available [here](#) [accessed: 27 July 2017]. See also: ECNI (2016), 'Response to the Consultation by the DCAL on a Sign Language Framework'. Available [here](#) [accessed: 27 July 2017]

<sup>81</sup> Including their rights as a cultural and linguistic minority to be able to access services in their own language.

However, the current draft Programme for Government does not include any commitments to advance the proposed Framework.<sup>82</sup>

## 4.5 Insurance

46. 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>83</sup> Insurers are exempt from the disability provisions of the EA 2010, provided they are reasonably relying on relevant actuarial data.<sup>84</sup>

## 5. Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28) – List of Issues questions 4, 14, 16, 22, 23 and 30

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### 5.1 Poverty, material deprivation and food insecurity

47. UKIM is concerned that disabled people **across the UK** are more likely to live in poverty than people who are not disabled.<sup>85</sup> The latest statistics confirm that on both relative<sup>86</sup> and absolute<sup>87</sup> low income measures, those living in a family with a disabled member are more likely to be in low income than non-disabled families.<sup>88 89</sup>

48. UKIM is also concerned that disabled people across the UK are also more likely to live in material deprivation than people who are not disabled.<sup>90</sup> In **GB**, intersectional analysis shows that for disabled people in 2014/15, ethnic minority disabled people experienced a

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<sup>82</sup> See [here](#) [accessed: 27 July 2017]

<sup>83</sup> UKIM (2017), 'Disability Rights in the UK', p. 22: This can add to additional costs facing disabled people, their exclusion from mainstream financial products, and limit where they can live and travel.

<sup>84</sup> Ibid.

<sup>85</sup> UKIM (2017), 'Disability Rights in the UK', p. 23.

<sup>86</sup> 'Relative low income' sets a threshold as a proportion of the UK average (median) income and moves each year as average income changes. It is used to measure the number and proportion of individuals who have income below this threshold (typically 50, 60 or 70 per cent of the median).

<sup>87</sup> 'Absolute low income' sets a threshold as a proportion of the UK average income in a given year (2010/11) and moves each year in line with inflation. It is used to measure the number and proportion of individuals who have incomes below this threshold (typically 50, 60 or 70 per cent of median of the 2010/11 median, adjusted to the relevant year's prices).

<sup>88</sup> Between 2014/15 and 2015/16 the headline low income measures were unchanged for individuals in families with disabled members and those without. For individuals in families with at least one disabled member, the percentage in relative and absolute low income remained at 20 per cent and 18 per cent respectively. Since 2012/13 the gap between families where someone is disabled and families where no-one is disabled in absolute low income has narrowed. See [here](#) [accessed: 27 July 2017] and in particular [here](#), p.12 [accessed: 27 July 2017]

<sup>89</sup> Intersectional analysis covering **GB** shows that living in poverty was most common for young disabled people aged 25-34, followed by those aged 35-44. See EHRC (2017), 'Being Disabled in Britain', p. 71. Available [here](#) [accessed: 27 July 2017]

<sup>90</sup> UKIM (2017), 'Disability Rights in the UK', p. 23. Material deprivation is a measure of what households can afford, and so better reflects the standard of living than income alone.

poorer standard of living; Black/African/Caribbean, Mixed and Pakistani disabled people being the most materially deprived.<sup>91</sup>

49. There is growing concern about the rapid rise in people using food banks in Britain since 2010.<sup>92 93</sup> A study covering **GB**<sup>94</sup> published in June 2017 profiled the characteristics of food bank users. It found that half of the people surveyed were disabled and unable to work. Furthermore, 78 per cent of households in the study 'were cutting back on food intake, experiencing hunger, and/or going whole days without eating because they lacked enough money for food' over the past 12 months.<sup>95 96</sup> This research also found that 'the people using food banks are groups who have been most affected by recent social security reforms, including disabled people'.<sup>97</sup>

50. In **Wales** there is no information about the number of disabled people in poverty within the Welsh Index of Multiple Deprivation. Comparisons between disabled and non-disabled people at a local authority level would provide more useful data.<sup>98</sup>

## 5.2 Impact of social security reforms

51. UKIM remains concerned that social security reforms introduced by successive UK Governments since 2010 are having a particularly negative, disproportionate and cumulative impact on the rights to independent living and an adequate standard of living for disabled people.<sup>99 100</sup>

52. There are ongoing concerns about the impact of reforms on particular groups of disabled people:

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<sup>91</sup> EHRC (2017), 'Being Disabled in Britain', p. 72. In addition, intersectional analysis shows that in 2014/15 in GB, young disabled people aged 16-24 were increasingly experiencing a poorer standard of living than non-disabled young people, and 34-44 year old disabled people were the most materially deprived.

<sup>92</sup> Ibid., p. 73

<sup>93</sup> Loopstra, R. and Lalor, D. (2017), 'Financial insecurity, food insecurity and disability: The profile of people receiving emergency food assistance from the Trussell Trust Foodbank Network in Britain'. Available [here](#) [accessed: 27 July 2017]

<sup>94</sup> Ibid. This is the first study to use systematic sampling methods to find out more about the characteristics of foodbank users across Britain. Data was gathered from over 400 households across 18 foodbanks. This is the biggest national research project to date on food bank use.

<sup>95</sup> i.e. 78 per cent of households were classed as severely food insecure over the past 12 months.

<sup>96</sup> Ibid., pp. viii and xi

<sup>97</sup> Ibid.

<sup>98</sup> EHRC (2017), 'Disability Rights in Wales', p. 14

<sup>99</sup> UKIM (2017), 'Disability Rights in the UK', pp. 14-15. Reforms include 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 the Disability Living Allowance (DLA) to Personal Independence Payments (PIP), some measures brought about through Universal Credit, and the under-occupation deduction to housing benefit.

<sup>100</sup> With the impact of social security reform falling heavily on people living in poverty – which includes a significant proportion of disabled people – research shows that disabled people in poverty are also affected by wider cuts. For example, The Centre for Welfare reform suggests cuts affecting disabled people are nine times more than that placed on most other citizens: Centre for Welfare Reform (2013), 'A Fair Society? How the Cuts Target Disabled People'. Available [here](#) [accessed; 28 July 2017]

- The UN Committee on the Elimination of Discrimination against Women expressed its concern about the impact of austerity measures on the rights of disabled women in its July 2013 Concluding Observations.<sup>101</sup>
- Families with disabled children face additional financial challenges to those faced by families without a disabled child, and are likely to be at greater risk of poverty.<sup>102 103</sup>
- The benefits process was seen as particularly insensitive to the complex nature of many impairments, particularly where the invisibility of certain conditions (such as mental health conditions) means needs are not recognised.<sup>104</sup>

53. The impact of social security reforms is likely to be particularly pronounced in **Wales** due to the proportion of disabled adults in the population. The EHRC has welcomed the Welsh Government's commitment to putting in place mitigating measures, where possible.<sup>105</sup>

54. Responsibility for around a third of non-pension social security benefits is being transferred to the **Scottish** Parliament, including disability related benefits such as Carer's Allowance, DLA and PIP.<sup>106</sup> The Social Security (Scotland) Bill was introduced into the Scottish Parliament in June. The EHRC and SHRC welcome the Scottish Government's commitment to design and develop the new social security system in adherence with seven principles, which include the principle that 'social security is a human right, essential to the realisation of other human rights,' and to explore with the EHRC whether there is sufficient data to conduct a Cumulative Impact Assessment (CIA) on the new system.<sup>107</sup>

55. The **Northern Ireland** Executive committed to financially protect disabled people impacted by changes to social security benefits for a temporary period to afford them time to 'adjust' to the reforms.<sup>108</sup>

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<sup>101</sup> Committee on the Elimination of Discrimination against Women (2013), 'Concluding observations on the seventh periodic report of the UK', paras 20 and 21.

<sup>102</sup> These include the extra and ongoing costs of caring for their child and difficulties in sustaining employment due to the demands of juggling work and caring.

<sup>103</sup> Specific changes to how Universal Credit is allocated could reduce the financial support available to some families with disabled children. Other reforms are also likely to cause financial hardship, especially as changes to different benefits will have a cumulative effect on many households. See [here](#) and Kennedy, S., Murphy, C. and Wilson, W. (2016), 'Welfare reform and disabled people'. House of Commons Briefing Paper 7571. Available [here](#) [accessed: 28 July 2017]

<sup>104</sup> Copestake, P., Sheikh, S., Johnston, S. and Bollen, A. (2014), 'Removing barriers, raising disabled people's living standards'. OPM and Ipsos MORI. Available [here](#) [accessed: 28 July 2017]

<sup>105</sup> EHRC (2017), 'Disability Rights in Wales', p. 15

<sup>106</sup> Scottish Government (2017), 'Social security for Scotland: benefits being devolved to the Scottish Parliament'. Available [here](#) [accessed: 27 July 2017]

<sup>107</sup> Scottish Government (2017), 'Social Security (Scotland) Bill 2017 Equality Impact Assessment'. Available [here](#) [accessed: 28 July 2017]

<sup>108</sup> Northern Ireland Executive (2016), 'Programme for Government Consultation'. Available [here](#) [accessed: 28 July 2017]

56. UKIM also remains deeply concerned that the UK Government has not provided an adequate response to, or taken action to address the recommendations of, the CRPD Committee's Inquiry.<sup>109</sup> Instead, new policies have been introduced which may further the negative effect on disabled people, including:

- The Social Security (Personal Independence Payment) (Amendment) Regulations 2017,<sup>110 111</sup> were introduced in **GB** in response to two Upper Tribunal Judgments, which challenged the Department for Work and Pension (DWP)'s interpretation of particular daily living and mobility descriptions that are part of the PIP assessment.<sup>112</sup> Equivalent Regulations have also been passed in **Northern Ireland**.<sup>113</sup> UKIM is concerned that the changes brought in by the Regulations will place people with mental health conditions at a serious disadvantage in meeting the costs they face relating to their condition; are contrary to the UK Government's CRPD obligations to support disabled people to participate fully in society; and contradict the social model of disability by treating psychosocial impairments differently to other impairments.<sup>114</sup>
- From April 2017 new claimants **across the UK** placed in the Work-Related Activity Group of the Employment and Support Allowance receive the same weekly payment as those on Jobseeker's Allowance.<sup>115</sup> This equates to an annual loss of about £1,500 a year for a disabled person.<sup>116</sup> The EHRC opposed this change and raised concerns about the lack of appropriate impact assessment.<sup>117</sup> The EHRC's offer to assist with an impact assessment of the change was refused.<sup>118</sup> Other stakeholders have voiced serious concerns that the change may put disabled people at a significant disadvantage

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<sup>109</sup> UKIM has called on the UK Government to act upon the recommendations: UKIM (2017), 'Disability Rights in the UK', p. 22.

<sup>110</sup> The Social Security (Personal Independence Payment) (Amendment) Regulations 2017, Explanatory note. Available [here](#) [accessed: 28 July 2017].

<sup>111</sup> Gov.uk. 2017. *Personal Independence Payment (PIP)*. [ONLINE]. Available [here](#) [accessed: 28 July 2017]. PIP is a benefit that helps with the extra costs caused by long-term ill health or disability for individuals aged between 16 and 64. The change from Disability Living Allowance (DLA) to PIP was introduced in the Welfare Reform Act 2012. PIP is gradually replacing DLA across the UK.

<sup>112</sup> In order to qualify for PIP, a claimant must meet basic qualifying conditions (for example relating to age or place of residence) and also disability conditions, for a 'qualifying period'. The impact of a person's disability on daily living and mobility needs are considered at a PIP assessment.

<sup>113</sup> Personal Independence Payment (Amendment) Regulations (Northern Ireland) 2017. Confirmed by correspondence with the Northern Ireland Department for Communities Equality Unit, 20 July 2017.

<sup>114</sup> EHRC. 2017. *Advice for Parliamentarians: Social Security (Personal Independence Payment) (Amendment) Regulations 2017*. [ONLINE]. Available [here](#) [accessed: 27 July 2017]

<sup>115</sup> See [here](#) [accessed: 27 July 2017]

<sup>116</sup> House of Commons Library (2017), Abolition of the ESA Work-Related Activity Component. Available [here](#) [accessed: 27 July 2017]

<sup>117</sup> In its submissions to debates on the Welfare Reform and Work Bill. See EHRC Briefing (Jan 2016) on amendments to Welfare Reform and Work Bill, Report Stage: Clauses 11, 12, 13, and 14. House of Lords. Available [here](#) [accessed: 27 July 2017]

<sup>118</sup> See the EHRC's letter to the Secretary of State [here](#) and the Secretary of State's letter to the EHRC [here](#) [accessed: 27 July 2017]



where they have unavoidably higher living costs.<sup>119</sup> It is essential that a personal support package, which includes both financial and employment support, is in place to support the capacity of individuals to look for and move into work.<sup>120</sup>

57. There are also ongoing issues related to ESA which are continuing to have a negative impact on disabled people:

- Work Capability Assessments (WCAs)<sup>121</sup> remain a significant concern, with claimants with serious health conditions or impairments found ‘fit for work’, and evidence showing that assessments, reassessments and poor decisions are adversely impacting on the physical and mental health of claimants, and links made to some suicides.<sup>122</sup> A 2017 EHRC report laid out a large body of evidence of the negative impact of WCAs on disabled people,<sup>123</sup> and evidence continues to emerge.<sup>124</sup> A recent parliamentary report called for swift reform of the WCA, noting that it is ‘fundamentally flawed’.<sup>125</sup>
- ESA conditionality and sanctions are having a detrimental impact, particularly on those with mental health conditions.<sup>126</sup> A 2017 survey found that 90 per cent of respondents who had received out-of-work benefits and been sanctions reported said this experience had negatively affected their mental health.<sup>127</sup>

58. UKIM remains seriously concerned about the continued failure of the UK Government to conduct an assessment of the cumulative impact of multiple policy and law reforms on disabled people, and to assess and justify retrogressive measures against the established UN criteria, namely to determine whether they are temporary, necessary, proportionate and

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<sup>119</sup> See [here](#) [accessed: 27 July 2017] and House of Commons Work and Pensions Committee (2017), ‘Disability employment gap – Seventh report of session 2016-17’. Available [here](#) [accessed: 27 July 2017]

<sup>120</sup> This should be a personal support package which includes both financial and employment support.

<sup>121</sup> A person must undergo a Work Capability Assessment to determine whether they have a limited capacity for work and if they are capable of ‘work-related activity’.

<sup>122</sup> UKIM (2017), ‘Disability Rights in the UK’, p. 28

<sup>123</sup> EHRC (2017), ‘Being Disabled in Britain’, pp. 65-67.

<sup>124</sup> For example, a small-scale study in Scotland in 2017 concluded that WCAs cause deterioration in some people’s mental health. See: Heriot Watt University and Napier University (2017), ‘Mental Health and Unemployment in Scotland’. Available [here](#) [accessed: 27 July 2017]

<sup>125</sup> House of Commons Work and Pensions Committee (2017), ‘Disability employment gap – Seventh report of session 2016-17’. Available [here](#) [accessed: 27 July 2017]

<sup>126</sup> EHRC (2017), ‘Being Disabled in Britain’, p. 66. See also: Royal College of Psychiatrists (2017), ‘Submission to: Improving Lives. The Work, Health and Disability Green Paper.’ Available [here](#).

<sup>127</sup> Mind (May 2017) ‘People with mental health problems made more unwell by benefits system’, available [here](#). Online survey of 2,814 people with mental health conditions, carried out between 25 January and 7 February 2017.

non-discriminatory, and that they do not undercut a core minimum level of protection.<sup>128</sup> An EHRC-commissioned study has shown that CIAs are both feasible and practicable.<sup>129 130</sup>

### 5.3 Independent living funding

59. UKIM has significant concerns about the closure of the Independent Living Fund (ILF) on 30 June 2015, with continued support of ILF users transferred to local authorities in England and the devolved administrations.<sup>131</sup>

60. In **England**, without ring-fencing of the funds or adequate mechanisms to monitor spending, there are significant concerns and emerging evidence of a postcode lottery of support across different local authority areas.<sup>132</sup> Evidence shows that this is resulting in a regression in disabled people's Article 19 rights.<sup>133</sup>

61. In **Wales**, the Welsh Independent Living Grant was set up by the Welsh Government in order to provide continued support to former ILF recipients.<sup>134</sup> By April 2019 all former ILF recipients will have their care and support needs met through normal social care provision under the Social Services and Well-being (Wales) Act 2014.<sup>135</sup>

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<sup>128</sup> Pillay, A (Chairperson, Committee on Economic, Social and Cultural Rights) (personal communication by letter 16 May 2012) CESCR/48<sup>th</sup>/SP/MAB/SW, available [here](#). See also: Special Rapporteurs' Joint communication to the UK Government on the Welfare Reform and Work Act, Ref: AL GBR 1/2016, 08/04/2016, p. 39, available [here](#).

<sup>129</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>130</sup> The EHRC is now conducting an updated CIA of tax, social security and public spending reforms on different protected characteristic groups, including disabled people. This project is being run in conjunction with Howard and Jonathan, Aubergine Analysis and Landman Economics, and an updated report is due for publication in November 2017.

<sup>131</sup> UKIM (2017), 'Disability Rights in the UK', p. 25 and EHRC (2017), 'Disability Rights in England', p. 13. Available [here](#) [accessed: 27 July 2017]: The UK Independent Living Fund (ILF) was closed on 30 June 2015, and the continued support of ILF users was transferred to local authorities (LAs) in England and the devolved administrations.

<sup>132</sup> EHRC (2017), 'Disability Rights in England', p. 13

<sup>133</sup> According to the 'Independent Living Strategy Group' survey:

- Around one third (34 per cent) of former ILF recipients reported new restrictions being placed on their support.
- In relation to social care generally, significant numbers of people reported a range of different restrictions being placed on how they could use the money available for their support: for example 50 per cent of respondents reported support was restricted to personal care tasks only.
- A quarter of respondents (25 per cent) said the hours of work or volunteering they could do had reduced or reduced significantly.

See [here](#) [accessed: 27 July 2017]:

<sup>134</sup> Welsh Government. 2015. *Press release: Wales replaces the axed UK Independent Living Fund*. [ONLINE]. Available [here](#) [accessed: 27 July 2017]

<sup>135</sup> Welsh Government. 2016. *Written statement – Future Support Arrangements in Wales for Former Independent Living Fund Recipients*. [ONLINE]. Available [here](#) [accessed: 27 July 2017]

62. UKIM is concerned that the ILF in **Northern Ireland** is restricted to existing users, leading to its de facto closure with future arrangements unclear.<sup>136</sup> There is also an absence of quantitative information on the extent to which disabled people with substantial needs, who are not existing ILF users, are having their needs met through the Self-directed Support and Direct Payments provisions.

63. Furthermore, key stakeholders in **Northern Ireland** have pointed out that Direct Payments do not fund many of the activities that were funded by the ILF, and that disabled people using this scheme therefore have less choice and control than was possible through support from the ILF.<sup>137</sup>

### Re-institutionalisation concerns

64. The EHRC<sup>138</sup> is concerned that local authority budget cuts in **England** are leading to a reduction in independence and autonomy for disabled people in their home lives.

65. Evidence continues to emerge, showing that many Clinical Commissioning Groups (CCGs)<sup>139</sup> across **England** may be forcing patients with ongoing care needs to accept residential care home placements due to restrictions to NHS Continuing Healthcare funding.<sup>140</sup> According to the responses to a Freedom of Information request,<sup>141</sup> at least 37 CCGs have a policy that if a person's NHS Continuing Care costs are above the cost of residential care by a certain percentage, the CCG will not pay the additional cost of support for someone in their home, effectively forcing them into residential care. The EHRC is concerned that this may be a potentially serious breach of disabled people's Article 19 right

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<sup>136</sup> UKIM (2017), 'Disability Rights in the UK', p. 25; NIHR and ECNI (2017), 'Disability Rights in the Northern Ireland', p. 6. Available [here](#) [accessed: 27 July 2017]

See also: ECNI (2014), 'Response to the Department of Health, Social Services and Public Safety (DHSSPS) Consultation on the future support of ILF Users in Northern Ireland'. Available [here](#) [accessed: 27 July 2017]

<sup>137</sup> See, for example, comments by Disability Action and the Centre for Independent Living in Murphy, E. (2013), 'The Independent Living Fund', pp. 4-5, Available [here](#) [accessed: 27 July 2017]

<sup>138</sup> EHRC (2017), 'Disability Rights in England', p. 14. Available [here](#) [accessed: 27 July 2017]

<sup>139</sup> Clinical Commissioning Groups (CCGs) were created following the Health and Social Care Act in 2012, and replaced Primary Care Trusts on 1 April 2013. CCGs are clinically-led statutory NHS bodies responsible for the planning and commissioning of health care services for their local area.

<sup>140</sup> 'NHS continuing healthcare' means a package of ongoing care that is arranged and funded solely by the NHS where the individual has been found to have a 'primary health need' as set out in this guidance. Such care is provided to an individual aged 18 or over, to meet needs that have arisen as a result of disability, accident or illness. The actual services provided as part of the package should be seen in the wider context of best practice and service development for each client group. Eligibility for NHS continuing healthcare places no limits on the settings in which the package of support can be offered or on the type of service delivery. See para 13 [here](#) [accessed: 27 July 2017]

<sup>141</sup> FOI requests were made by a disabled people's organisation (DPO) to all CCGs in England asking for details of any policy they had capping the cost of NHS Continuing Care that enabled disabled people or people with long-term health conditions to stay in their home, rather than being in a care or nursing home.



to live independently within the community, and could result in disabled people being re-institutionalised.<sup>142</sup>

66. In light of the above concerns, it should be noted that:

- The right to live independently in the community is not currently recognised as a statutory right in the **UK**.
- Disabled people cannot claim protection of this right in the **UK** courts.
- Statutory guidance for the Care Act 2014 in **England**, and the Social Services and Well-being (Wales) Act 2014 in **Wales**, explains that the over-riding duty to promote 'well-being' includes giving effect to Article 19 of the CRPD. However, the EHRC is concerned that local authorities do not understand the full implications of this when reaching decisions about care support, so is intervening in the case of *Davey v Oxfordshire County Council* in the Court of Appeal.<sup>143</sup>

#### 5.4 Adult social care and support

67. There is increasing demand but reduced funding for social care **across the UK** leading to difficulties in delivering support, and long-standing concerns about the severity of need required for someone to be eligible for state-funded social care.<sup>144</sup>

68. While the UK Government has made some recent funding commitments in relation to adult social care in **England**, these are unlikely to adequately address the needs of disabled people of all ages.<sup>145</sup> Furthermore, any additional funding for adult social care must be considered and assessed against a backdrop of overall reductions in central government funding for local authorities.<sup>146</sup>

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<sup>142</sup> The EHRC is currently undertaking a legal analysis of CCG NHS Continuing Healthcare policies and may take enforcement action if proportionate and if the evidence shows equality and human rights are being breached.

<sup>143</sup> *Davey v Oxfordshire County Council and Another* [2017] CA/2017/1043. This case is about a disabled man whose 24-hour care package was cut by 40 per cent, and which EHRC also intervened in when Davey was unsuccessful at first instance. See further information in paragraph 70 below.

<sup>144</sup> UKIM (2017), 'Disability Rights in the UK', p. 26

See also: Commissioner for Older People for Northern Ireland (2015), 'Domiciliary Care in Northern Ireland', para 1.12, p. 8. Available [here](#) [accessed: 30 July 2017]

<sup>145</sup> In particular, the additional £2 billion across three years committed in the Spring 2017 Budget by the UK Government is intended to 'relieve pressure on the NHS', and therefore, in our analysis it is likely to be dedicated primarily toward providing short-term reablement support to older people recovering from injury or illness. The Spring 2017 Budget announced funding of £105 million to councils this year under the Better Care Fund. However, this funding is intended to support integration of health and social care services so that people can be discharged from hospital into the community. Therefore, while both funding announcements are welcome, they are not sufficient to ensure that all disabled people enjoy their Article 19 right to live independently in the community. See [here](#) [accessed 28 July 2017]

<sup>146</sup> LGA press release (20 February 2017) LGA responds to final Local Government Finance Settlement, [here](#) [accessed 28 July 2017]

69. In 2016/17 the EHRC intervened in the first instance case of *Davey v Oxfordshire County Council*,<sup>147</sup> where Mr Davey challenged the Council's decision to reduce his 24-hour care package because of the adverse impact this decision had on his ability to make choices about when and who supported him to live independently. The EHRC's intervention guided the Court on how the CRPD should be applied by public authorities in **England** when they are making decisions about levels of care and support for disabled people. The case was lost at first instance and his appeal is due to be heard on 17 August 2017. The EHRC is applying to intervene at his appeal hearing to reiterate its submissions and correct elements of the first instance judgment that failed to recognise that the Care Act 2014 intended to apply CRPD Article 19, and should be interpreted accordingly.

70. The Scottish Government has committed to reform adult social care in **Scotland**, including the commissioning of residential care and the role of new models of care and support in home care.<sup>148</sup> The EHRC and SHRC consider that any reform should take place within the framework of the CRPD and Article 19 requirements in particular.

71. The introduction of Self-Directed Support (SDS) in Scotland, which allows disabled people to make informed choices about social care and how it is delivered, has been supported by disabled people and their organisations. However, concerns have been raised about its implementation.<sup>149</sup> Recent research found low uptake of SDS, waiting times of up to a year for SDS packages to be put in place after people have been assessed, and that many consider their SDS packages insufficient for their needs.<sup>150</sup>

72. While welcoming the emphasis of the Social Services and Well-Being (Wales) Act 2014 on ensuring that people have voice, choice and control over their social care in **Wales**, the EHRC has expressed concern that the duty of due regard on the face of the Act in relation to the Convention on the Rights of the Child (CRC) and the UN Principles for Older Persons does not apply to the CRPD.<sup>151</sup>

73. In **Northern Ireland** the Commissioner for Older People has commented that: 'There is no cohesive approach at regional level to the delivery of key support services for those ...people who are assessed as needing non-critical levels of domiciliary care'<sup>152</sup> but who

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<sup>147</sup> *Davey v Oxfordshire County Council* [2017] EWHC 354 (Admin)

<sup>148</sup> Scottish Government (2016), 'Fairer Scotland Action Plan'. Available [here](#) [accessed: 27 July 2017]

<sup>149</sup> EHRC and SHRC (2017), 'Disability Rights in Scotland', p. 10. Available [here](#) [accessed: 27 July 2017]

<sup>150</sup> The Alliance (2017), 'Personal experiences of Self-Directed Support', pp. 61-70. Available [here](#) [accessed: 27 July 2017]

<sup>151</sup> EHRC (2017), 'Disability Rights in Wales', p. 16. Available [here](#) [accessed: 27 July 2017]

<sup>152</sup> Domiciliary care is defined under the Health and Personal Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 as: 'An undertaking which consists of or includes arranging the provision of prescribed services in their own homes for person who by reason of illness, infirmity, disability or family circumstances are unable to provide any such service for themselves without assistance'.

would greatly be assisted by social care services'.<sup>153</sup> The Commissioner also stated that good quality domiciliary care was a 'postcode lottery'<sup>154</sup> and noted increasing concern that domiciliary care visits are being reduced from thirty to fifteen minutes in some areas.<sup>155</sup>

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<sup>153</sup> Commissioner for Older People for Northern Ireland (2015), 'Domiciliary Care in Northern Ireland', para 1.12, p. 8. Available [here](#) [accessed: 27 July 2017]

<sup>154</sup> Ibid., para 1.14, p. 8.

<sup>155</sup> Ibid., para 6.9, p. 19.

## 5.5 Support for carers

74. Families of disabled people **across the UK** often provide significant care, and experience difficulties in paying bills, maintaining good health and participating in work and educational opportunities.<sup>156</sup>

## 6. Employment (Article 27) – List of Issues questions 20 and 21

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### 6.1 Employment gap and barriers

75. Disabled people **across the UK** are less likely to be in employment than non-disabled people.<sup>157</sup> In the UK 49 per cent of disabled people aged 16-64 were in employment in January-March 2017 compared with 80 per cent of non-disabled people.<sup>158 159</sup> There are concerns that government initiatives intended to address the disability employment gap will fail to achieve positive change.<sup>160</sup>

76. In **Scotland**, despite the obligation on local authorities under the Mental Health (Care and Treatment) (Scotland) Act 2003 with respect to supporting people on Community-based Compulsory Treatment Orders (CCTOs) to secure and sustain employment, little progress had been made to give effect to this duty.<sup>161</sup>

77. There are concerns that the Employment Strategy for disabled people in **Northern Ireland** will not be sufficiently resourced.<sup>162</sup> Furthermore, little progress has been made with respect to providing transition support for young people over 19 years,<sup>163</sup> especially those with complex needs.<sup>164</sup>

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<sup>156</sup> UKIM (2017), 'Disability Rights in the UK', p. 27.

A recent report by Carers UK found that carers in Northern Ireland are reaching 'breaking point' as they struggle to take even a day away from care responsibilities for years at a time. Nearly a third (30 per cent) of unpaid carers in Northern Ireland have not had a day off in over one year, while one in five (21 per cent) had not received a day away from caring in over five years.

See [here](#) [accessed: 27 July 2017]

<sup>157</sup> UKIM (2017), 'Disability Rights in the UK', pp. 28-30

<sup>158</sup> Office for National Statistics (2017), Labour market status of disabled people. May 2017: Table AO8.

<sup>159</sup> In GB as a whole in 2015/16, the disability employment gap was 32 percentage points, above the European Union average. The gap has widened from 30 percentage points in 2013: House of Commons Work and Pensions Committee (2017), 'Disability employment gap', figure 2, p. 6. Available [here](#) [accessed: 27 July 2017]. There are particularly low employment rates for people with severe or specific learning difficulties; difficulties in seeing, or mental health conditions. See EHRC (2017), 'Being Disabled in Britain', table EG1.1. Available [here](#) [accessed: 27 July 2017]

<sup>160</sup> UKIM (2017), 'Disability Rights in the UK', pp. 28-31

<sup>161</sup> EHRC and SHRC (2017), 'Disability Rights in Scotland', p. 12. Available [here](#) [accessed: 27 July 2017]

<sup>162</sup> IMNI (2017), 'Disability Rights in Northern Ireland', p. 9. Available [here](#) [accessed: 27 July 2017]: A key issue is the impact of Brexit on the Supported Employment sector, which has to date been reliant on support from the European Social Fund, in the absence of a mainstreaming approach by the Northern Ireland Executive. The disability employment gap in Northern Ireland is higher than in any other nation within the UK.

<sup>163</sup> Byrne, B. and McAlister, S. (2014), 'Transitions for Young People with Hearing Loss', pp. 130-140. Available [here](#) [accessed: 27 July 2017]

78. Since February 2017:

- The UK Parliament Work and Pensions Committee released a report<sup>165</sup> that welcomed the UK Government's commitment to halve the disability employment gap and some efforts to achieve it. However, it commented that the UK Government would struggle to achieve its target if it could not bring employers on board and enhance in-work support, and recommended publication of a Disability Employment Strategy.<sup>166</sup>
- In **Northern Ireland**, the draft delivery plan for Indicator 42 of the Programme for Government, 'Average life satisfaction score of persons with disabilities', commits to implementation of the Employment Strategy for disabled people<sup>167</sup> to create a pathway that will help more young adults move into work. The plan also includes a commitment to 'ensure that disabled people who are economically inactive are, where possible, helped back into the labour market'.<sup>168</sup>

## 6.2 Pay gap

79. Disabled people in the **UK** are paid less on average than non-disabled people.<sup>169</sup> In **GB** in 2016 the disability pay gap stood at 13.6 per cent.<sup>170</sup>

80. Research from the EHRC<sup>171</sup> explores the disability pay gap.<sup>172</sup> Key findings include:

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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: 27 July 2017];

Lundy, L., Byrne, B. and McKeown, P. (2012), 'Review of transitions to Adult Services for Young People with Learning Disabilities', para 2, p. 34. Available [here](#) [accessed: 27 July 2017]

<sup>164</sup> ECNI (2015), 'Response to Department for Employment and Learning consultation on a Strategy for "improving the job prospects and working careers of people with disabilities in Northern Ireland"'. Available [here](#) [accessed: 27 July 2017]; ECNI (2014), 'Evidence from the ECNI to the Committee for Employment and Learning Inquiry into Post Special Educational Needs Provision in Education, Employment and Training for those with Learning Disabilities', paras 60-65. Available [here](#) [accessed: 27 July 2017]. Although the draft delivery plan for Programme for Government indicator 42, Average life satisfaction score of persons with disabilities, includes a commitment to improve the experience of transitions for young disabled people and their families, a final plan has not yet been signed off by the Northern Ireland Executive: See [here](#) [accessed: 27 July 2017].

<sup>165</sup> House of Commons Work and Pensions Committee (2017), 'Disability employment gap'. Available [here](#) [accessed: 27 July 2017].

<sup>166</sup> Among the Committee's key recommendations were that the Government should publish a Disability Employment Strategy which would bring together the different initiatives that relate to halving the gap; build on them and ensure that this is seen as a shared long-term priority across all relevant Departments; and that the Strategy should be supported by annual reports on progress towards meeting goals, drawing on improved monitoring arrangements.

<sup>167</sup> Department for Employment and Learning (2016), 'Supporting Equality Through Inclusive Employment: An Employment Strategy for People with Disabilities'. Available [here](#) [accessed: 27 July 2017]

<sup>168</sup> Department for Communities (2016), 'Draft delivery plan for indicator 42, Average life satisfaction score of persons with disabilities'. Available [here](#) [accessed: 27 July 2017]

<sup>169</sup> UKIM (2017), 'Disability Rights in the UK', p. 31.

<sup>170</sup> The difference in pay between disabled and non-disabled people. EHRC (2017), 'Being disabled in Britain', table EG2.2. Available [here](#) [accessed: 27 July 2017]

<sup>171</sup> Longhi, S. (2017), 'The disability pay gap'. EHRC. The research explores the characteristics associated with differences in pay, such as age, occupation and level of education.

- The causes of the disability pay gap are complex. However, there is evidence that disabled people face barriers and discrimination in employment. There are also differences in the personal characteristics of disabled people and non-disabled people that have an impact on the pay gap. For example, lower levels of education or reduced ability to work continuously on a full-time basis can have a negative impact on pay.
- The size of the pay gap varies depending on the exact nature of the disability. The pay gaps for those with neurological disorders, mental health conditions, learning difficulties or disabilities<sup>173</sup> tend to be large.<sup>174</sup>
- The pay gaps for those with physical impairments are substantial. Men with physical impairments generally experience pay gaps in the range of 15 to 28 per cent, depending on the nature of the disability. The difference between non-disabled women's pay and that of women with physical impairments ranges from eight to 18 per cent.
- An EHRC pay gaps strategy<sup>175</sup> notes that the UK, Scottish and Welsh Governments have already taken some steps in the right direction to reduce pay gaps:
  - All three governments are taking some action to support disabled people at work.<sup>176</sup>
  - The Welsh Government has set clear equality objectives to identify and reduce the causes of employment, skills and pay inequalities.<sup>177</sup>

81. The Employment Act (Northern Ireland) 2016<sup>178</sup> requires employers in **Northern Ireland** to publish information relating to employee pay for the purpose of showing whether there are differences in the pay of male and female employees. This information must also include statistics on workers within each pay band in relation to ethnicity and disability.<sup>179</sup>

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<sup>172</sup> The disability pay gap in the period 1997-2014 was 13 per cent for men and seven per cent for women. Pay gaps among men are often larger than those among women.

<sup>173</sup> This includes people with a wide range of disabilities, from dyslexia to severe intellectual impairments.

<sup>174</sup> For example: Men with epilepsy experience a pay gap close to 40 per cent (it is around 20 per cent for women); men with depression or anxiety have a pay gap of around three per cent and women have a pay gap of 10 per cent; men with mental illness, or suffering from phobia, panics or other nervous disorders, experience a pay gap of around 40 per cent (the pay gap for women was not statistically significant); men with learning difficulties or disabilities have a pay gap of around 60 per cent (the pay gap for women was not statistically significant).

Note, however, that these estimates have lower precision, so the actual pay gaps may be substantially higher or lower than these estimates.

<sup>175</sup> This strategy aims to reduce rather than to eliminate pay gaps, as some pay gaps may be based on an individuals' personal choice to work part-time or in a particular sector.

<sup>176</sup> DWP and DH (2016), 'Improving Lives: the Work, Health and Disability Green Paper'. Available [here](#) [accessed: 27 July 2017]; Scottish Government (2016), 'A Fairer Scotland for Disabled People'. Available [here](#) [accessed: 27 July 2017]

<sup>177</sup> The Welsh Government has an equality objective to identify and reduce the causes of employment, skills and pay inequalities related to gender, ethnicity, age and disability including closing the attainment gaps in education and reducing the number of people not in education, employment or training (NEET). See [here](#) [accessed: 27 July 2017]

<sup>178</sup> See [here](#) [accessed: 27 July 2017]

<sup>179</sup> Section 19 of the Employment Act (Northern Ireland) 2016. ECNI understands that the Department for Communities are currently preparing draft regulations to enact these provisions for public consultation.



82. From April 2017, gender pay gap reporting requirements under the EA 2010 will be extended in England, Scotland and Wales to all private and voluntary organisations with 250 or more employees, and in England to public bodies with 250 or more employees.<sup>180 181</sup> However, **across the UK** there remains no requirement on public or private employers to publish disability pay gaps.

## 7. Access to justice (Articles 13, 12) – List of Issues question 8

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### 7.1 Legal aid and advice

83. Changes introduced by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 mean that civil legal aid is no longer available in **England and Wales** for certain types of cases.<sup>182</sup>

84. Evidence shows that these changes:

- are having a seriously detrimental impact on disabled people's access to justice, with disabled people often disproportionately affected by those areas where legal aid funding has been cut<sup>183</sup>
- have left so-called 'advice deserts' in some areas.<sup>184</sup> The EHRC and others have noted that lack of access to early advice means that matters may escalate and become more costly to resolve, as well as having a greater impact on the individual(s) concerned.<sup>185</sup> A report from June 2017 underlines these concerns.<sup>186</sup>

85. While Exceptional Case Funding (ECF) is available in some instances<sup>187</sup> and has seen a small rise according to the latest statistics in June 2017,<sup>188</sup> significant concerns about the

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<sup>180</sup> In Scotland and Wales public organisations were subject to regulations requiring gender pay reporting before 31 March 2017.

<sup>181</sup> The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017: These provide that, by April 2018 (and thereafter annually), all qualifying organisations must publish proscribed gender pay gap data about employees as defined under s.83 of the Equality Act 2010, which includes apprentices and workers who have a contract personally to do work. See [here](#) [accessed: 27 July 2017].

<sup>182</sup> UKIM (2017), 'Disability Rights in the UK', pp. 32-33: legal aid is no longer available for most private family, housing, debt, welfare benefit, employment and clinical negligence matters.

<sup>183</sup> EHRC (2017), 'Disability Rights in England', pp. 16-17.

<sup>184</sup> UKIM (2017), 'Disability Rights in the UK', p. 33. The changes contributing to this negative impact include 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>185</sup> EHRC (2015), 'Equality, human rights and access to civil law justice: a literature review'. Available [here](#) [accessed: 27 July 2017]; Amnesty International (2016), 'Cuts that hurt: the impact of legal aid cuts in England on access to justice'. Available [here](#) [accessed: 27 July 2017]

<sup>186</sup> The Law Society (2017), 'Access denied? LASPO four years on: a Law Society review', pp. 12-15. Available [here](#) [accessed: 27 July 2017]: Almost a third of the legal aid areas in England and Wales have one or no local legal aid housing providers. Neither Shropshire nor Suffolk has any housing legal aid advice provider.

<sup>187</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,

inadequacy of ECF and the negative impact of legal aid changes on access to justice remain.<sup>189</sup>

86. The EHRC remains concerned about the accessibility of the telephone gateway service, Civil Legal Advice, for disabled people.<sup>190</sup>

87. In January 2017, the previous UK Government announced that it would undertake a review of the LASPO Act.<sup>191 192</sup> The post-legislative memorandum had not been published at the time of writing.

88. An independent review of legal aid in Scotland was announced at the start of 2017 and the review group has identified an indicative set of issues it considers are likely to arise. These include the effectiveness of legal aid processes and the role of legal aid in promoting equality and fairness. The review is likely to report by February 2018.<sup>193</sup>

## 7.2 Court and employment tribunal fees

89. The number of applications to employment tribunals, including disability discrimination claims, dropped significantly following the introduction of fees in **GB**, and the complexity of the fee remission system can be a barrier to accessing it.<sup>194</sup> There is also a lack of awareness about the availability of partial fee remission.<sup>195</sup>

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very few ECF applications are approved (five per cent were granted in the first year, i.e. April 2013-March 2014). See: Ministry of Justice (2016), Legal aid statistics: April to June 2016. Available [here](#) [accessed: 27 July 2017]. 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.

<sup>188</sup> The latest statistics bulletin, published 29 June 2017, while showing a rise in Exceptional Case Funding, demonstrate that the general position for disabled people in receipt of legal aid has 'changed little' since 2014-15. See [here](#) [accessed: 27 July 2017].

<sup>189</sup> The Law Society (2017), 'Access denied? LASPO four years on: a Law Society review', p. 22. Available [here](#) [accessed: 27 July 2017]: 'ECF applications are difficult and time consuming...Most applicants will, unsurprisingly, lack the specialist legal knowledge to demonstrate that the highly technical criteria of breach of risk of breach of the Convention or EU rights apply in their case. The scheme has been heavily criticised in reports by the National Audit Office and the Justice Select Committee'.

<sup>190</sup> EHRC (2017), 'Disability Rights in England', pp. 17-18. A more recent report from The Law Society in June 2017 reiterates these concerns. The Law Society (2017), 'Access denied? LASPO four years on: a Law Society review', p. 7. Available [here](#) [accessed: 27 July 2017]. The report notes that the mandatory nature of the service has created a barrier to face-to-face advice for those who might struggle to communicate by telephone, such as those with poor language skills and some physical or mental health conditions (see p.7).

<sup>191</sup> See [here](#) [accessed: 27 July 2017]

<sup>192</sup> In answer to a parliamentary question on 20 February 2017, Oliver Heald said: 'the Government plans to submit a Post Legislative Memorandum to the Justice Select Committee in a few months' time.' See [here](#) [accessed: 27 July 2017]

<sup>193</sup> Scottish Government (2017), 'Legal Aid Review Call for Evidence'. Available [here](#) [accessed: 27 July 2017]

<sup>194</sup> EHRC (2017), 'Disability Rights in the UK', p. 33: There was a 63% reduction in disability discrimination complaints in April-June 2014 compared with the same period the previous year. Using full year data (captured by financial year in the tribunal statistics, between 2012/13-2014/15), the total number of receipts to employment tribunal for disability discrimination dropped 59%: from 7,492 in 2012/13 to 3,106 in 2014/15. See: MOJ (2017), 'Tribunals and gender recognition statistics'. Available [here](#) [accessed: 27 July 2017].

<sup>195</sup> See [here](#) [accessed: 27 July 2017]



90. The EHRC's January 2017 submission to the post-implementation review stressed that the fees regime in **GB** seriously undermines the right to access justice, and the UK Government has failed to show that fees are a proportionate means of achieving a legitimate aim.<sup>196</sup>

91. The Supreme Court ruled on 26 July 2017 that the current scheme for employment tribunal fees is unlawful because it has the effect of preventing access to justice.<sup>197</sup> The court quashed the legislation which introduced the fees; fees will therefore no longer be charged and will be refunded to those who already paid.

92. As part of the devolution of employment tribunals, the Scottish Government has stated that there will be no tribunal fees.<sup>198</sup> However, court fees have been significantly increased, despite concerns being raised about the impact that this may have on access to justice for many and in particular disabled people.<sup>199</sup> The Scottish Government does not expect that the increases will have a discriminatory impact, including in relation to disability, because the fee increases affect all court users and those who earn less than average can secure assistance from legal aid and other available exemptions.<sup>200</sup> The EHRC and SHRC are concerned that this response does not take into account the disproportionate impact of such high court fees on disabled people, the disability pay gap and the barriers to getting legal aid, for example legal aid is not available for all civil cases.

### 7.3 Awareness of the CRPD and reasonable accommodations

93. There does not appear to be compulsory training for members of the judiciary on the CRPD or reasonable adjustments to ensure equal access to justice.<sup>201</sup>

94. The Northern Ireland Court of Appeal has recognised a need for lower courts to understand the challenges faced by disabled people seeking to access justice. The Court identified a need to develop awareness of the Equal Treatment Bench Book which, inter alia, sets out adjustments to court or trial procedures that may be required to accommodate the needs of disabled people.<sup>202</sup>

### 7.4 Disability discrimination in schools

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<sup>196</sup> See [here](#) [accessed: 27 July 2017]

<sup>197</sup> *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)* [2017] UKSC 51.

<sup>198</sup> Scottish Government (2015), 'A Stronger Scotland: The Government's Programme for Scotland 2015-16'. Available [here](#) [accessed: 27 July 2017]

<sup>199</sup> The Court Fees (Miscellaneous Amendments) (Scotland) Order 2016 schedules 1 and 4

<sup>200</sup> Scottish Government (2016), 'The Court Fees (Miscellaneous Amendments) (Scotland) Order 2016 Equality Impact Assessment'. Available [here](#) [accessed: 27 July 2017]

<sup>201</sup> UKIM (2017), 'Disability Rights in the UK', p. 34

<sup>202</sup> *Galo v Bombardier Aerospace UK* [2016] NICA 25

95. Education tribunals in the **UK** are not able to award financial compensation for disability discrimination or harassment. The civil courts are however able to award financial compensation for other forms of discrimination, such as race or sex discrimination, in the provision of school education.<sup>203</sup>

## 7.5 Support and protection in the criminal justice system in Scotland

96. Many disabled people experience difficulties with the criminal justice system and they are more likely to report a lack of confidence in the system providing equal access for all.<sup>204</sup>

97. Too often the criminal justice system does not provide enough support and protection to suspects, victims and witnesses who have learning disabilities. The Appropriate Adult scheme is under-resourced and inconsistent, and there is no formal system to provide support during the court process.<sup>205</sup>

## 8. Education (Articles 24, 7) – List of Issues question 18

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### 8.1 Inclusive education

98. UKIM's view is that the UK Government's interpretative declaration and reservation to CRPD Article 24 are unnecessary and contrary to the object and purpose of the Convention.<sup>206</sup>

99. In **England**, the trend towards inclusion in mainstream schools has stalled,<sup>207</sup> and there are concerns about the UK Government's reform to provision in education for children with special educational needs and disabilities (SEND).<sup>208</sup> Early findings reported in January 2017 from inspections into implementation of the reforms indicate some good progress, but identify weaknesses such as a lack of urgency in implementation.<sup>209</sup>

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<sup>203</sup> UKIM (2017), 'Disability Rights in the UK', p. 35: The County Court in England and Wales is empowered to award 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>204</sup> EHRC and SHRC (2017), 'Disability Rights in Scotland', p. 13

<sup>205</sup> Ibid.

<sup>206</sup> UKIM (2017), 'Disability Rights in the UK', p. 35.

<sup>207</sup> EHRC (2017), 'Disability Rights in England', pp' 18-19. There are also concerns that those children with SEND are not always able to access the right support within mainstream schooling.

<sup>208</sup> Ibid., pp 20-21: The Children and Families Act 2014 introduced a new code of practice for children with SEND. The key reform is the introduction of a single Education, Health and Care (EHC) plan covering birth to 25 years of age where appropriate. Concerns include poor information and communication, waste, fragmentation of services and dissatisfaction on the part of parents.

<sup>209</sup> Ofsted and CQC (2017), 'Local Area SEND inspections: key messages'. Available [here](#) [accessed: 27 July 2017]. In May 2016, Ofsted and the Care Quality Commission began inspecting local area implementation of the EHC plans in England. Early findings indicate good evidence of identifying and meeting needs in early years with good nursery to school transition but some areas struggling to meet needs for 16-25 year olds. Common weaknesses include a lack of urgency in implementation of the reforms; partners and agencies not

100. The most up-to-date statistics for **England** from May 2017 confirm that the percentage of children with a statement or Education, Health and Care (EHC) plan<sup>210</sup> attending state-funded special schools has gradually increased each year.<sup>211</sup> This appears to be a regression on the aim of inclusion of children with SEND in mainstream schooling.

101. Further key facts about children with SEND in **England** include:

- In 2016, 42.9% of school pupils with a statement or EHC plan were in state-funded primary schools while the rest were in state or independent schools.<sup>212</sup>
- Overall, the most common primary type of need is Moderate Learning Difficulty;<sup>213</sup> SEND is more prevalent among boys than girls, at all ages.
- Pupils with SEND are more likely to be eligible for free school meals than those without.
- SEND is most prevalent in Travellers of Irish Heritage, Gypsy/Roma and Black Caribbean pupils.<sup>214</sup>

102. Since February 2017, other developments with implications for inclusive education in **England** include:

- A £215 million funding boost for improved provision for children with SEND, announced on 4 March 2017<sup>215</sup> can be used by local councils for ‘special units’ and ‘special schools’, as well as for improving inclusion within mainstream schools.<sup>216</sup> While additional funding is welcome, it is concerning that no reference has been made to the duty to progressively realise inclusive education, and it appears that no guidance on CRPD requirements has been issued to local councils.

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yet working together well enough; and a lack of clear oversight of the quality of provision and outcomes for groups such as looked after children with SEND, pupils placed out of area and young people aged 19-25.

<sup>210</sup> Some children and young people with SEND may require an EHC needs assessment in order for the local authority to decide whether it is necessary for it to make provision in accordance with an EHC plan. The purpose of an EHC plan is to make special educational provision to meet the special educational needs of the child or young person, to secure the best possible outcomes for them across education, health and social care and, as they get older, prepare them for adulthood. See [here](#) [accessed: 27 July 2017].

<sup>211</sup> Department for Education (2017), ‘Special Educational Needs: An analysis and summary of data sources’, p. 9. Available [here](#) [accessed: 27 July 2017]. In 2010, 38.2 per cent of pupils with statements attended state-funded special schools and this has increased to 42.9 per cent of pupils with statements or EHC plans in 2016. The percentage of pupils with statements or EHC plans attending independent schools has also increased between 2010 and 2016, from 4.2 per cent to 5.7 per cent. However, the percentage attending state-funded secondary schools has declined noticeably, from 28.8 per cent in 2010 to 23.5 per cent in 2016.

<sup>212</sup> *Ibid.*, p. 6

<sup>213</sup> 24.2 per cent of all pupils with special educational needs have a Moderate Learning Difficulty. Moderate Learning Difficulty is also the most common primary type of need for pupils on SEN support (26.8 per cent).

<sup>214</sup> *Ibid.*

<sup>215</sup> See [here](#) [accessed: 27 July 2017]

<sup>216</sup> See [here](#) [accessed: 27 July 2017]

- An independent review into experiences and outcomes in residential special schools and colleges was launched in January 2017.<sup>217</sup> It is welcome that the review puts a spotlight on the experiences of children with SEND. However, the review fails to make reference to the Article 24 obligation to move progressively towards an inclusive education system.<sup>218</sup>

103. In relation to teacher training, we welcome the UK Government's acceptance of the recommendations of the independent expert group on developing a framework of core content for initial teacher training (ITT) in **England**.<sup>219</sup>

104. The Welsh Government is transforming the additional learning needs system in **Wales** through the Additional Learning Needs and Educational Tribunal (Wales) Bill.<sup>220</sup> The Bill is continuing to progress through the legislative process,<sup>221</sup> and a consultation on implementation concluded in early June.<sup>222</sup> The Minister for Lifelong Learning and Welsh Language announced a £20 million package of support for the implementation of the Bill.<sup>223</sup> Calls have been made for the CRPD to be more central to the Bill than it is currently.<sup>224</sup>

105. In relation to **Scotland**, despite the requirement for local authority, independent and grant-aided schools to produce an accessibility strategy, only 13 of 61 local authorities could provide a current strategy.<sup>225</sup>

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<sup>217</sup> Lenehan review of experiences and outcomes in residential special schools and colleges. See [here](#) [accessed: 27 July 2017]. The call for evidence closed on 17 March 2017, and the outcome of the review is pending.

<sup>218</sup> Concerns highlighted by stakeholders who contributed evidence to the review include caution about any consultation focusing narrowly on residential special schools without reference to the broader context. See: Association of Directors of Children's Services (2017), 'Submission to the Lenehan review of experiences and outcomes in residential special schools and colleges', para 14: 'Although the review is focused on residential special schools, it is important to view these as part of the wider education system.' Others have stated that: 'Residential special schools and colleges cannot be part of a truly inclusive education system... We need to create the alternative – a fully inclusive education system as set out in the UNCRPD'. See: ALLFIE (2017), 'Submission to the Lenehan review of residential special schools and colleges'. Available [here](#) [accessed: 27 July 2017]

<sup>219</sup> See: UK Government (2016), 'A framework of core content for initial teacher training (ITT)'. Available [here](#) [accessed: 27 July 2017]. This makes clear that: (i) Initial Teacher Education (ITE) providers should equip trainees to analyse the strengths and needs of all pupils; ensure they understand the principles of the SEND Code of Practice; and are able to adapt teaching strategies to ensure that pupils with SEND can access and progress within the curriculum. (ii) Trainees should be able to recognise signs that may indicate SEND and make adjustments to overcome any barriers to progress and ensure that pupils with SEND are able to access the curriculum.

<sup>220</sup> EHRC (2017), 'Disability Rights in Wales'.

<sup>221</sup> Welsh Assembly Research Service In Brief (2017), 'Additional Learning Needs and Education Tribunal (Wales) Bill – Bill Summary'. Available [here](#) [accessed: 27 July 2017].

<sup>222</sup> See [here](#) [accessed: 27 July 2017]

<sup>223</sup> See [here](#) [accessed: 27 July 2017]

<sup>224</sup> National Assembly's Children, Education and Young People Committee (2017), 'Additional Learning Needs and Education Tribunal (Wales) Bill'. Available [here](#) [accessed: 27 July 2017]. The report recommended that 'the Bill should include a specific duty on relevant bodies to have due regard to the UN Convention on the Rights of Persons with Disabilities'.

<sup>225</sup> EHRC and SHRC (2017), 'Disability Rights in Scotland'.

106. The number of disabled children in ‘special’ education in **Scotland** remains relatively static, with no notable trend towards inclusion.<sup>226</sup>

107. On 29 June 2017, the Northern Ireland Audit Office published a report on SEN provision within mainstream education in **Northern Ireland**.<sup>227</sup> The report was critical of the level of support currently provided to more than 75,000 children with SEN<sup>228</sup> and concluded that neither the Department of Education nor the Education Authority can currently demonstrate value for money in terms of economy, efficiency or effectiveness in the provision of support to children with SEN in mainstream schools.<sup>229</sup>

## 8.2 School exclusions

108. There are concerns across **GB** that:

- Despite guidance in place, permanent and/or temporary exclusion rates from school were far higher for pupils with SEN/additional support needs (ASN) than for other children across GB, although the gap is narrowing very slightly.<sup>230</sup>
- The Upper Tribunal<sup>231</sup> has confirmed that ‘the tendency to physically abuse others’<sup>232</sup> is excluded from the definition of disability even if it arises as a result of a disability (such as autism) and regardless of whether it applies to an adult or child.<sup>233</sup> Therefore, certain disabled children are not protected by the EA 2010 in relation to school exclusions.

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<sup>226</sup> Scottish Government (2016), Summary statistics for schools in Scotland, No. 7: 2016. Available [here](#) [accessed: 27 July 2017]

<sup>227</sup> NIAO (2017), ‘Special Education Needs Full Report and Key Facts’. Available [here](#) [accessed: 27 July 2017].

<sup>228</sup> Key findings included that: (i) 80 per cent of SEN statements issued in 2015/16 were not completed within the recommended 26 weeks; that there was a lack of consistency across schools; (ii) the impact of specific support provisions (such as classroom assistants) have not been evaluated at a strategic level; (iii) there had been a 45 per cent rise in costs for SEN support provision since 2011-12.

<sup>229</sup> The report did acknowledge that a greater proportion of children with SEN were leaving school with GCSEs or A-Levels and fewer were leaving school with no qualifications. It recommended that the implementation of the new SEN framework during the 2018-19 academic year must be underpinned with a consistent approach to identifying and providing for SEN children and robust mechanisms for the strategic evaluation of interventions and outcomes; rigorous monitoring of expenditure; and continued efforts to reduce delays in issuing statements.

<sup>230</sup> UKIM (2017), ‘Disability Rights in the UK’.

<sup>231</sup> *X v Governors of a School* [2015] UKUT 7 (AAC) E.L.R. 133

<sup>232</sup> Regulation 4(1) Equality Act 2010 (Disability) Regulations 2010

<sup>233</sup> Concerns about the effect of this exclusion on disabled children have also raised by the House of Lords Select Committee Report on the Equality Act 2010 and Disability (2016) para 502. Available [here](#) [accessed: 27 July 2017]. In its view: ‘treating a tendency to physical abuse as not amounting to an impairment has, unintentionally, discouraged schools from paying sufficient attention to their duties under the Act. Removal of the exclusion would allow a proper examination to be made of any suggestion of disability discrimination, including a failure to make a reasonable adjustment. This would not result in schools being required to tolerate violent behaviour—the flexibility of the reasonable adjustment duty would, for example, allow a school to take into account the needs of the wider school population’.



109. In **England**, guidance from the Department for Education advises that: ‘The head teacher should, as far as possible, avoid permanently excluding any pupil with an Education, Health and Care plan...’<sup>234</sup>

### 8.3 Transition from school

110. Disabled young people **across the UK** face significant barriers to transitioning from school to further education or employment, and are more likely not to be in education, employment or training.<sup>235</sup>

111. A June 2017 report from the Welsh education inspection body concluded that further education colleges in **Wales** must do more to support young people with learning disabilities to develop their communication and work skills, and made recommendations for improvements.<sup>236</sup>

112. In **Wales** in 2014/15 only 1.3 per cent of apprenticeships were started by disabled learners.<sup>237</sup> A number of barriers that prevent disabled learners from engaging in apprenticeship programmes have been identified.<sup>238</sup>

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<sup>234</sup> Department for Education (2017), ‘Exclusion from maintained schools, academies and pupil referral units in England’. Available [here](#) [accessed 26 July 2017]. This updated guidance is effective from 1 September 2017.

<sup>235</sup> UKIM (2017), ‘Disability Rights in the UK’, p. 37: In 2015/16, a greater proportion of disabled 16-18 year olds were NEET compared with non-disabled in GB (13.2 per cent cf. 5.8 per cent), England (12.6 per cent cf. 5.7 per cent), Wales (17.9 per cent cf. 6.7 per cent) and Scotland (17.2 per cent cf. 6.9 per cent). A high percentage of disabled people with mental health conditions were NEET in 2015/16: in GB (20.3 per cent), England (18.9 per cent), Wales (27.7 per cent), and Scotland (28.8 per cent) compared with non-disabled people. See EHRC (2017), ‘Being disabled in Britain’ and associated data table CE1.7. Available [here](#) [accessed: 27 July 2017].

See also: ECNI (2015), ‘Response to Department for Employment and Learning (DEL) consultation on a Strategy for “improving the job prospects and working careers of people with disabilities in Northern Ireland”’. Available [here](#) [accessed: 27 July 2017]; ECNI (2014), ‘Evidence from the Equality Commission for Northern Ireland to the Committee for Employment and Learning Inquiry into Post Special Educational Needs Provision in Education, Employment and Training for those with Learning Disabilities’, paras 60-65. Available [here](#) [accessed: 27 July 2017].

<sup>236</sup> Estyn (2017), ‘Learner progress and destinations in independent living skills learning areas in further education colleges’. Available [here](#) [accessed: 27 July 2017]. Recommendations included: identifying learners’ wider skills and abilities during initial assessments; ensuring individual learning plans take sufficient account of these; and designing programmes of learning that are more relevant and challenging.

<sup>237</sup> EHRC (2017), ‘Being Disabled in Britain’. Available [here](#) [accessed: 27 July 2017]

<sup>238</sup> Estyn (2015), ‘Breaking down barriers to apprenticeships’. Available [here](#) [accessed: 29 July 2017]. Barriers identified included lack of awareness of apprenticeships by parents, employers and learners themselves; few apprenticeship role models from disabled groups; and difficulties in finding suitable work placements, especially where employers believe there will be a need to provide additional support.

## 8.4 Access to higher education

113. In relation to **England**, reductions to Disabled Students' Allowance (DSA) will disproportionately affect disabled students from low income households.<sup>239</sup>

114. The Diamond Review found that disabled students experience significant barriers to accessing higher education in **Wales**.<sup>240</sup> The Welsh Government has accepted the recommendation to consider what further assistance can be offered to disabled students.<sup>241</sup> A consultation is to be carried out during 2016/17 to seek views on proposed changes to support for disabled students in higher education from 2018/19.

## 8.5 Additional support for learning (ASL) – children's right to appeal in Scotland

115. The EHRC and SHRC continue to have serious concerns about the capacity and well-being assessments that will take effect in **Scotland** from January 2018, which are required if a child wants to appeal the level of ASL provided by their local authority. In the relevant draft revised Code of Practice, the Scottish Government explains that these assessments will be carried out by the education authority the child is seeking to exercise their right of appeal against. An appeal will only be allowed if the education authority is satisfied the child has sufficient maturity and understanding to exercise the particular right and that in exercising the right there will be no adverse impact to the child's well-being.<sup>242</sup>

116. In our view the assessments will disproportionately affect disabled children and will have the effect of reversing the presumption of legal capacity from age 12 in Scots law. The Scottish Government is also failing to address concerns that the education authority will have a conflict of interest when carrying out both assessments.

## 8.6 Educational attainment

117. **Across the UK**, fewer children with SEN/ASN achieve good results in Key Stage 4 or on leaving school than those pupils without SEN/ASN.<sup>243</sup> The latest available statistics confirm the continued educational attainment gap.<sup>244</sup>

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<sup>239</sup> UKIM (2017), 'Disability Rights in the UK', p. 38: the UK Government confirmed it would reduce the support offered to English disabled students through the Disabled Students' Allowance (DSA), which will disproportionately affect disabled students from low income households.

<sup>240</sup> EHRC (2017), 'Disability Rights in Wales', p 21. Professor Diamond was supported by an expert Review Panel to conduct a review of higher education funding and student finance arrangements in Wales. In October 2016, the Welsh Government accepted the recommendations put forward by the review in principle.

<sup>241</sup> Welsh Government (2017), 'Response to the recommendations from the Review of Student Support and Higher Education Funding in Wales', p.14. Available [here](#) [accessed: 27 July 2017]

<sup>242</sup> Scottish Government (2017), 'Consultation on Supporting Children's Learning Draft Code of Practice (Third Edition)'. Available [here](#) [accessed: 27 July 2017]

<sup>243</sup> UKIM (2017), 'Disability Rights in the UK', p. 34

<sup>244</sup> England: 'A new secondary school accountability system has been implemented in 2016. In 2015/16 the average Attainment 8 score per pupil with SEN was 31.2, compared to 53.2 for pupils with no identified SEN.

## 9. Health and life (Articles 25, 10) – List of Issues questions 1(f) and 19

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### 9.1 Health inequalities

118. Disabled people in the **UK**, particularly those with learning difficulties, are more likely to experience health inequalities than non-disabled people.<sup>245</sup> Concerns include:

- People with mental health conditions and learning disabilities die younger than non-disabled people;<sup>246</sup>
- People with learning disabilities are one the groups least likely to access palliative care.<sup>247</sup>

119. Evidence in **Scotland** also highlighted concerns that people on community-based Compulsory Treatment Orders (CTOs) are not receiving regular physical health reviews.<sup>248</sup>

120. Research in **Wales** also showed geographic differences in the uptake of health checks among people with learning disabilities, and the need for accessible health advice and information about health checks.<sup>249</sup>

121. The EHRC has welcomed NHS England's ongoing learning disability mortality review in **England**, which aims to identify the reasons why people with learning disabilities often die prematurely.<sup>250</sup>

122. The Welsh Government's end of live care delivery plan published in March 2017 provides a welcome acknowledgment of the barriers faced by disabled people in accessing end-of-life care in **Wales**, and the need for improvements to be made.<sup>251</sup> The impact of the action plan is yet to be seen.

### 9.2 Access to and quality of mental healthcare services

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Pupils with a statement of SEN or Education, Health and Care plan had lower attainment and progress scores than those receiving SEN support.' See [here](#) [accessed: 27 July 2017]

Scotland: 'In 2015/16, 91% of children with no Additional Support Needs (ASN) achieved at least one award at SCQF level 5 or better, compared to 67.6% of children with ASN. However, when compared to the previous year this represents an improvement of seven percentage points for those with ASN but less than one percentage point for children without ASN. So the attainment gap has narrowed'. See [here](#) [accessed: 27 July 2017]

Wales: 'The percentage of pupils with SEN achieving the Level 2 threshold including a GCSE grade A\*-C in English or Welsh (First Language) and Mathematics (L2EWM) was 26.1 per cent in 2016, compared to 60.3% of all pupils. However, L2EWM achievement increased for all categories of SEN requirement between 2015 and 2016.' See [here](#) [accessed: 27 July 2017]

<sup>245</sup> UKIM (February 2017) Disability Rights in the UK, pp 39-40.

<sup>246</sup> UKIM (February 2017) Disability Rights in the UK, pp 39-40; EHRC & SHRC (February 2017) *Disability Rights in Scotland*, p 17

<sup>247</sup> UKIM (February 2017) Disability Rights in the UK, pp 39-40.

<sup>248</sup> EHRC and SHRC (2017), 'Disability Rights in Scotland', p. 17

<sup>249</sup> EHRC (2017), 'Disability Rights in Wales', p. 22.

<sup>250</sup> EHRC (2017), 'Disability Rights in England', p. 22.

<sup>251</sup> Welsh Government (2017). 'Palliative and End of Life Care Delivery Plan'. Available [here](#) [accessed: 27 July 2017]



123. UKIM is concerned that mental health services **across the UK** have experienced underfunding; many people experience long waits for treatment, have unmet needs or have to travel very far from home for treatment.<sup>252 253</sup> Concerns have been raised by the UN Committee on the Rights of the Child about mental health services for children.<sup>254</sup> In addition, there are a lack of hospital beds, and reliance on emergency services.<sup>255</sup>

124. The EHRC has called on the UK Government to implement the recommendations of the independent Mental Health Taskforce, which set out a five-year national strategy for mental health in England.<sup>256</sup>

125. In **England**, evidence shows:

- despite funding commitments for adult and child and adolescent mental health services, the funding is often being used for other purposes.<sup>257 258 259</sup>

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<sup>252</sup> UKIM (2017), 'Disability Rights in the UK'.

<sup>253</sup> BMA. 2017. *Press release: BMA figures show startling rise in mental health out of area placements*. [ONLINE]. Available [here](#) [accessed: 27 July 2017]

<sup>254</sup> UN Committee on the Rights of the Child (2016), 'Concluding observations on the fifth periodic report of the UK and Northern Ireland'. Available [here](#) [accessed: 27 July 2017]: including that children are often treated far away from home (in Scotland and England), are placed in adult facilities and that waiting time targets may not be achieved due to a lack of specialists and clinics/ treatment centres

<sup>255</sup> EHRC (2017), 'Being Disabled in Britain', pp. 94-98. Available [here](#) [accessed: 27 July 2017]. Some people need the specialist help available in inpatient mental health units but there has been a reduction in mental health inpatient provision in England, which decreased by 10 per cent between December 2010 and December 2014, from 23,740 beds to 21,446. This reduction results in part from policies to introduce a more community-based model of services; however, this has come at a time when community mental health services and the voluntary sector have undergone major cuts. When combined with other social determinants of mental health that are worsening, such as poverty, unemployment and social isolation, people have less support to prevent crisis and maintain living in the community, therefore putting more pressure on beds. Research shows that people with poor mental health use more emergency hospital care than those without. In 2013/14, this was 3.2 times as many A&E attendances and 4.9 times as many emergency inpatient admissions. Only a small part of this emergency care was explicitly to support mental health needs. In 2013/14, 19 per cent of emergency inpatient admissions for those with 'mental ill health' were to explicitly support their mental health. This means that the majority of care was used to support other health concerns.

<sup>256</sup> EHRC (2017), 'Disability Rights in England', p. 22. In addition to the report of the independent Mental Health Taskforce (MHT), an implementation plan was published in July 2016 by NHS England. See: NHS England (2016), 'Implementing the five year forward view for mental health'. Available [here](#) [accessed: 7 February 2017]. A progress report one year on has also been published in February 2017: NHS England (2017) Five year forward view for mental health: one year on. Available [here](#) [accessed: 30 July 2017].

<sup>257</sup> Funding for mental health has not however been ring-fenced in England and concerns have been raised that that the money is not been used as intended and is frequently being diverted to fund other services. See: House of Commons Committee of Public Accounts (2016), 'Improving access to mental health services'. Available [here](#) [accessed: 27 July 2017]

<sup>258</sup> See [here](#), [here](#) and [here](#) [accessed: 27 July 2017];

<sup>259</sup> Young Minds. 2016. *Press release: Children's mental health funding not going where it should be*. [ONLINE]. Available [here](#) [accessed: 27 July 2017] In 2015, the Government promised an additional £1.4 billion over five years to 'transform' Child and Adolescent Mental Health Services (CAMHS). Research undertaken by Young Minds into the responses of 199 Clinical Commissioning Groups (CCGs) from Freedom of Information requests revealed that in the first year of extra funding (2015-16), only 36 per cent of CCGs who responded increased their spend on children's mental health services by as much as the allocated additional government funds. Almost two-thirds of CCGs used money to compensate for cuts or spend on other areas. In the second year of funding only half of CCGs (50 per cent) who responded increased their CAMHS spend by as much as their additional government funds.

- ongoing concerns about the tendency, primarily in the independent sector, for people with severe mental health conditions to remain in hospital for very long time periods.<sup>260</sup>
- concerns about the state of child and adolescent mental health inpatient services in England, including evidence in a recent report that young people are staying in hospital much longer than necessary due to a lack of services in the community.<sup>261</sup>

126. UKIM welcomes statements from the Queen’s Speech in June 2017 in relation to **England**, which indicate a commitment to making mental health a priority in the NHS; continued investment in mental health services; and promise the publication of a Green Paper on Children and Young People’s Mental Health.<sup>262</sup>

127. In relation to **England**, the 2016 Care Quality Commission (CQC) report into the application of the Mental Health Act (MHA) states that ‘good care is not consistent across the country’. CQC points to several areas where practice needs to improve, including the provision of information about the right to an independent mental health advocate; provision of information in accessible formats; greater patient involvement in care planning; and facilitation of access to health check-ups and care.<sup>263</sup>

128. Improving access to mental health services and support is a key equality and human rights challenge in **Wales**, and there has been a significant increase in demand for CAMHS in the last four years with insufficient capacity to meet it.<sup>264</sup>

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<sup>260</sup> Care Quality Commission (2017), ‘The state of care in mental health services 2014 to 2017’. Available [here](#) [accessed: 30 July 2017]. See also: Care Quality Commission (2016), ‘State of Care’. Available [here](#) [accessed: 28 July 2017].

<sup>261</sup> Education Policy Institute (2017), ‘Inpatient provision for children and young people with mental health problems’. Available [here](#) [accessed: 30 July 2017].

<sup>262</sup> UK Government (2017), ‘Queen’s Speech’, pp. 56-57. Available [here](#) [accessed: 27 July 2017].

- The Government will continue to invest in new and better services across the whole spectrum of mental health conditions. In particular, making further improvements in early intervention, investing in community services and expanding access to 24/7 crisis care support both in the community and in A&E.
- The Government will publish a Green Paper on Children and Young People’s Mental Health focused on helping our youngest and most vulnerable members of society receive the best start in life. This will make sure best practice is being used consistently and will help to accelerate improvements across all services so that children and young people get the right mix of prevention and specialist support.

<sup>263</sup> CQC (2016), ‘Monitoring the Mental Health Act in 2015/16’. Available [here](#) [accessed: 27 July 2017]:

- For 12 per cent of patients interviewed by CQC as part of its review of the MHA, there was no evidence they had been informed of their right to an independent mental health advocate
- For 12 per cent of patient records reviewed by the CQC there was no evidence that information had been provided in an accessible format.
- In just under a third of cases (29 per cent) there was no evidence of patient involvement in care planning.
- In 32 per cent of care plans reviewed by the CQC there was no evidence of discharge planning – an increase of three per cent on the previous year.
- A number of secure mental health wards needed to do more to facilitate access to health check-ups and care.

<sup>264</sup> National Assembly for Wales Children, Young People and Education Committee (2014), ‘Inquiry into child and adolescent mental health services’. Available [here](#) [accessed: 27 July 2017]

129. In July 2017, the National Assembly for Wales's Children, Young People and Education Committee launched an inquiry into the 'Emotional and Mental Health of Children and Young People'.<sup>265</sup> The inquiry will consider whether the review of CAMHS – the 'Together for Children and Young People Programme' - is on track to deliver the changes in CAMHS services that are needed. This inquiry will provide welcome scrutiny of relevant legislation and policy. The Welsh Government should consider the recommendations that result.

130. In **Scotland**, since 2014, the majority of Scottish health boards have continually failed to meet the waiting time target of 90 per cent of patients to be referred to psychological therapy within 18 weeks.<sup>266</sup> A review of Intensive Psychiatric Care Units found a range of unmet needs, including a lack of activities, rehabilitation or a therapeutic environment.<sup>267</sup> People with complex needs, including people with autism or a dual diagnosis such as learning disability plus mental health condition, or women and young people needing secure care have been found to be receiving worse mental health services than others and have poorer outcomes.<sup>268</sup> Overall, concerns in Scotland about mental health care and support have been growing and this has led to calls for a root and branch review, including a focus on moving towards supported decision-making, to be carried out by an independent Commission of enquiry.<sup>269</sup>

131. Around one in five adults in **Northern Ireland** shows signs of a mental health condition.<sup>270</sup> One factor, broadly accepted to have contributed to the prevalence of mental health conditions among the general population, is the history of violent conflict.<sup>271</sup> Research shows that individuals who experienced a conflict-related traumatic event relating to the 'Troubles' are more likely to have a mental health condition at some point in their lives.<sup>272</sup>

132. Evidence suggests that mental health services in Northern Ireland have been funded more poorly than elsewhere in the UK for some time, both with respect to Northern Ireland's

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<sup>265</sup> National Assembly for Wales's Children, Young People and Education Committee launches an Inquiry into 'the Emotional and Mental Health of Children and Young People'. See [here](#) [accessed: 27 July 2017].

<sup>266</sup> ISD Scotland (2017), 'Psychological Therapies HEAT Access Target'. Available [here](#) [accessed: 28 July 2017]

<sup>267</sup> EHRC and SHRC (2017), 'Disability Rights in Scotland', p. 15

<sup>268</sup> Ibid.

<sup>269</sup> See the Scottish Mental Health Partnership and the Rights for Life Change Agenda (2016)

<sup>270</sup> Information Analysis Directorate, Department of Health, Social Services, and Public Safety (2016), 'Health Survey Northern Ireland: First Results 2015/16', p. 9. Available [here](#) [accessed: 28 July 2017]. See also: Betts, J. and Thompson, J. (2017), 'Mental Health in Northern Ireland'. Northern Ireland Assembly Research and Information Service, NIAR 412-16. Available [here](#) [accessed: 28 July 2017].

<sup>271</sup> Oral Statement by Chief Constable of the PSNI to the Northern Ireland Affairs Committee of the House of Commons. See Hansard Script 24 January 2012 HC 877-i.

<sup>272</sup> Bamford Centre for Health & Wellbeing at the University of Ulster and 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'. Commission for Victims and Survivors. Available [here](#) [accessed: 28 July 2017]

share of the overall health budget and on a per capita basis.<sup>273</sup> Research carried out in 2011 found that actual spending per capita on mental health services in Northern Ireland was 10-30 per cent lower than in England, even though it necessitated almost 44 per cent higher per capita funding.<sup>274</sup>

133. The suicide rate in **Northern Ireland** is significantly higher than elsewhere in the UK.<sup>275</sup> The most recent Suicide Prevention Strategy ran from 2012 to 2014. IMNI is aware that the Department of Health, Social Services and Public Safety has consulted on a revised Strategy, 'Protect Life 2', which will work in tandem with the Regional Mental Health Care Pathway.<sup>276</sup> IMNI considers that an integrated, wide-ranging strategy, tackling the factors influencing the high rate of suicide and mental health conditions, including the conflict-related matters, should be developed for Northern Ireland.

### 9.3 Sexual and reproductive health

134. A number of research studies across the UK indicated that disabled women experience a number of barriers to accessing sexual and reproductive health and information services. For example:

- Few services or support groups offer support and information about sex and relationships for people with a learning disability, and sex education is often insufficient.<sup>277</sup>
- Small-scale qualitative research in England<sup>278</sup> and a 2016 small-scale UK-based survey<sup>279</sup> provide evidence that most women with learning disabilities did not make their own decisions about the use of contraception, or had their choices constrained by various factors including fear of losing services.

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<sup>273</sup> Commission on Acute Adult Psychiatric Care (2016), 'Building on progress: achieving parity for mental health in Northern Ireland – Final Report', p. 64. Available [here](#) [accessed: 27 July 2017]

<sup>274</sup> Ibid, in particular see: Appleby, J. (2011), 'Rapid review of Northern Ireland health and social care funding needs and the productivity challenge: 2011/12-2014/15'. Available [here](#) [accessed: 28 July 2017]. Mental health funding has also compared poorly (i) in terms of actual spending against budgeted spending and (ii) with respect to other health categories. Between 2008 and 2014, actual spend on mental health services by Health and Social Care Trusts was around 25 per cent less than had been projected. See Wilson, G. et al. (2015), 'Regress? React? Resolve?: An evaluation of mental health service provision in Northern Ireland', p. 3. Available [here](#) [accessed: 28 July 2017]. This compared unfavourably with other areas of healthcare; for example although funding for primary care increased by 136.2 per cent, mental health services have experienced year on year reductions in funding since 2009.

<sup>275</sup> The National Confidential Inquiry into Suicide and Homicide by people with Mental Illness (2016), 'Annual Report: England, Northern Ireland, Scotland and Wales'. University of Manchester. Table 77, p. 87. Available [here](#) [accessed: 28 July 2017]

<sup>276</sup> Health and Social Care Board (2014), 'You in mind – Promoting Hope, Opportunity and Personal Control'. Available [here](#) [accessed: 28 July 2017]

<sup>277</sup> See [here](#) [accessed: 28 July 2017]

<sup>278</sup> See [here](#) [accessed: 28 July 2017]

<sup>279</sup> See [here](#) [accessed: 28 July 2017]

- Reproductive and maternity rights were strong themes that emerged during forums to discuss disabled women's equality in **Scotland** in 2013-15. Many reported experiences of negative comments from health professionals with regards to pregnancy and maternity and assumptions about their fertility, capacity and desire to parent. Some also reported feeling pressured to terminate pregnancies and to take steps to avoid becoming pregnant.<sup>280</sup> A small-scale study<sup>281</sup> also found that unlike non-disabled women, disabled women's pregnancies were perceived as 'abnormal', and the women reported incidents where their choices were denied.<sup>282</sup>
- Research in Northern Ireland<sup>283</sup> recommended that consideration should be given to the specific needs of disabled women with respect to maternity services, and that awareness training for health service staff is needed in respect of the sexual health and well-being of disabled women.

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<sup>280</sup> Engender (2016), 'Our Bodies, Our Choice: The case for a Scottish Approach to Abortion'. Available [here](#) [accessed: 28 July 2017]

<sup>281</sup> Bradbury-Jones, C. *et al.* (2015), 'Disabled women's experiences of accessing and utilising maternity services when they are affected by domestic abuse: a critical incident technique study'. Available [here](#) [accessed: 28 July 2017]. This study involved five pregnant disabled women in Scotland with experience of domestic abuse during pregnancy.

<sup>282</sup> Between the five women in the study, they reported 10 incidents where their choices were denied, their preferences denied and their sense of agency compromised, out of a total of 45 critical incidents relating to accessing and utilising maternity services

<sup>283</sup> Harper, C., McClenahan, S., Byrne, B. and Russell, H. (2012), 'Disability programmes and policies: How does Northern Ireland measure up? Monitoring Implementation (public policy and programmes) of the United Nations Convention on the Rights of Persons with Disabilities in Northern Ireland', para 5.2.4.1, p. 60. Available [here](#) [accessed: 28 July 2017]. See also: Department of Health, Social Services and Public Safety (2012), 'Equality Action Plan for the Department of Health, Social Services and Public Safety', v1.1. Available [here](#) [accessed: 28 July 2017]



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

135. Many people with a learning disability or autism across the UK are placed in psychiatric hospitals inappropriately, or are likely to have longer stays in hospital than other mental health patients.<sup>284 285</sup>

136. The Lenehan Review (January 2017) found that poor community provision, no single point of accountability for care, and the lack of early intervention for children and their families means that children with significant needs are often 'stuck' in Assessment and Treatment Units (ATUs), long distances from home.<sup>286</sup> It is currently unclear what steps Government is taking to implement the review's recommendations.

137. Research published this year reveals concerns about how a person who has been in an ATU for five years will generate a substantial profit for an independent sector organisation.<sup>287</sup> This is particularly concerning as independent sector inpatient services charge more; are, on average, poorer quality in terms of being compliant with CQC standards, and their use of restraint; and people experience longer stays.<sup>288</sup>

## 9.5 Inappropriate use of 'Do Not Resuscitate' orders

138. There is evidence of 'Do Not Resuscitate' (DNR) orders being inappropriately applied to disabled people by medical professionals across the UK.<sup>289</sup>

139. Guidance for **England and Wales** on DNR orders includes a decision-making framework underpinned by the principle of non-discrimination and the Human Rights Act.<sup>290</sup>

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<sup>284</sup> UKIM (2017), Disability Rights in the UK, p. 42

<sup>285</sup> Ibid., p.46. The EHRC and Children's Commissioner for England highlighted these issues to the Minister for State for Health (letter 10 August 2016, unpublished). The response to the letter (21 March 2017) acknowledges the concerns about the long-term detention of young people with learning disabilities/autism in mental health settings for prolonged periods of time. The letter refers to the Transforming Care programme, and the recommendations of the Lenehan review (see footnote 286 below). However, it is unclear whether these initiative will transform the system sufficiently to ensure that children and adults with learning disabilities are not inappropriately detained.

<sup>286</sup> Council for Disabled Children (2017), 'These are our children: A review by Dame Christine Lenehan. Director, Council for Disabled Children'. Available [here](#) [accessed 28 July 2017].

<sup>287</sup> Brown, M. James, E. and Hatton, C (2017) 'A Trade in People: The inpatient healthcare economy for people with learning disabilities and/or Autism Spectrum Disorder', Lancaster: Centre for Disability Research. Available [here](#) [accessed: 27 July 2017]

<sup>288</sup> Ibid. The report also says there is little control over where units are located. As a result, families of a person put into an inpatient unit often face long and difficult journeys for infrequent hour-long visits, making it difficult to maintain family support and sometimes reducing the likelihood of a discharge.

<sup>289</sup> UKIM (2017), 'Disability Rights in the UK', p. 43

<sup>290</sup> BMA, the Resuscitation Council and RCN (2016), 'Decisions relating to cardiopulmonary resuscitation'. Available [here](#) [accessed: 28 July 2017]

The guidelines explicitly state that ‘decision-makers must not be influenced by their own personal views about living with a particular condition or disability’.<sup>291</sup>

140. The Scottish Government has produced revised guidance for healthcare professionals on DNR orders including a decision-making framework which highlights human rights standards and CRPD in particular.<sup>292</sup>

## 9.6 Investigating deaths in learning disability or mental health services

141. The EHRC welcomes the publication of a review by the CQC, which examined how NHS Trusts in **England** investigate and learn from deaths of people using learning disability or mental health services.<sup>293</sup> The UK Government’s statement accepting the recommendations, which made a number of commitments for taking them forward,<sup>294</sup> is also welcome.

142. The EHRC endorses the recommendations of this review, and welcomes the first edition of the National Guidance on Learning from Deaths<sup>295</sup> published in March 2017. The guidance proposes for all deaths to be reviewed by ‘independent medical examiners’ from April 2018 and for deaths of people with learning disabilities that meet certain criteria<sup>296</sup> to be reviewed by an ‘independent, trained reviewer’ who will decide whether a multi-agency review is required. It states that ‘reviewers would be expected to conduct reviews independent of the Trust in which they work’.

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<sup>291</sup> Ibid., p. 9

<sup>292</sup> NHS Scotland (2016), ‘Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) Integrated Adult Policy’. Available [here](#) [accessed: 28 July 2017]

<sup>293</sup> Care Quality Commission (2016), ‘Learning, candour and accountability’. Available [here](#) [accessed: 28 July 2017]. The report made seven key recommendations, including:

1. The Secretary of State for Health, and everyone within the health and social care system, should make learning from deaths a national priority.
2. The Department of Health and the National Quality Board working with Royal Colleges and families should develop a new single framework on learning from deaths.

<sup>294</sup> See [here](#) [accessed: 28 July 2017]

<sup>295</sup> See [here](#) [accessed: 28 July 2017]. The new guidance is intended to standardise and improve the way acute, mental health and community trusts identify, report, review, investigate and learn from deaths, and engage with bereaved families and carers.

<sup>296</sup> The ‘inclusion criteria for mortality review’. According to the Learning Disability Mortality Review (LeDeR) Programme, the Inclusion Criteria are:

- Initial reviews are undertaken of all deaths notified to the LeDeR programme of people with learning disabilities aged four years and older in England.
- Deaths of children younger than four years of age are not to be subject to review beyond the collection of core data. Their deaths are reviewed as part of the statutory Child Death Review Process.

See p.6 [here](#) [accessed: 28 July 2017]



143. The Chief Coroner<sup>297</sup> raised concerns about the independence and quality of medical examiners. We share these concerns and we also consider them relevant to ‘trained reviewers’ who will review the deaths of people with learning disabilities.

144. There is a gap in **Scotland** in the arrangements for investigating deaths in mental health settings.<sup>298</sup>

## 9.7 Non-natural deaths in detention and post-custody in England and Wales

145. In **England and Wales**:

- There are outstanding recommendations from an EHRC inquiry, which documented a number of non-natural deaths of adults with mental health conditions in prisons, police custody or psychiatric hospitals between 2010 and 2013.<sup>299</sup>
- There are significant concerns about the number of deaths within a month of release from state custody, with mental health as a key factor.<sup>300</sup>

## 10. Freedom from exploitation, violence and abuse (Articles 16, 6) – List of issues questions 3(b), 4(b) and 11

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

146. Disability hate crime persists **throughout the UK** and there are high levels of under-reporting, despite some initiatives in place.<sup>301</sup>

147. In **England and Wales**:

- Recent new approaches to reporting hate crime may prove useful for individuals experiencing disability-related harassment.<sup>302</sup>
- A Criminal Justice Joint Inspection Review of how the police, Crown Prosecution Service and probation trusts<sup>303</sup> dealt with disability hate crime made a priority

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<sup>297</sup> In response to the consultation on the introduction of medical examiners and reforms to death certification in England and Wales. See [here](#) [accessed: 28 July 2017]

<sup>298</sup> EHRC and SHRC (2017), ‘Disability Rights in Scotland’, p. 18

<sup>299</sup> EHRC (2017), ‘Disability Rights in England’, p. 23

<sup>300</sup> Ibid.: Research in 2016 from the EHRC examined deaths within a month of release from state custody in England and Wales. Other key recommendations also need to be implemented.

<sup>301</sup> UKIM (2017), ‘Disability Rights in the UK’, p. 44. For example a new hate crime action plan for England and Wales was published in July 2016 by the UK Government, and the Scottish Government’s Draft Delivery Plan 2016-2020 relating to CRPD makes a commitment to encourage hate crime reporting through awareness-raising.

<sup>302</sup> EHRC (2017), ‘Disability Rights in England’, pp. 24-25: including opportunities to report by text, online or through telephone helplines; and an increase in third party reporting centres. These examples are primarily from charities/third sector initiatives, but True Vision – a third party reporting centre owned by the National Police Chiefs Council – should also be noted.

recommendation that they should all adopt and publish a single, clear and uncomplicated definition of a disability hate crime that is communicated effectively to the public and staff.<sup>304</sup> A follow up report in 2015 found that little to no progress had been made against the recommendations.<sup>305</sup>

148. According to the latest statistics in **Scotland**, released in June 2017, 2016-17 is the first year the number of charges reported has fallen since 2010.<sup>306</sup> However, there is broad consensus that this type of crime continues to be under-reported compared with other forms of hate crime.<sup>307</sup>

149. The EHRC's final report from its inquiry into disability-related harassment<sup>308</sup> outlines some progress **across GB**.<sup>309</sup> However, under-reporting of disability-related hate crime and harassment remains prevalent,<sup>310</sup> and further action is needed to improve law and policy, data and evaluation and victim support.<sup>311</sup>

150. In July 2017, the EHRC wrote to the Secretary of State for Justice to seek an update on plans to respond to recommendations by the Law Commission in 2014 to address inequalities in legal provisions for sentencing different types of hate crime in **England and**

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<sup>303</sup> Probation trusts were replaced by the National Probation Service and Community Rehabilitation Companies on 1 June 2014. See e.g. [here](#) [accessed: 17 July 2017].

<sup>304</sup> EHRC (2017), 'Disability Rights in England', pp. 24-25; HM Crown Prosecution Service Inspectorate, HMIC and HM Inspectorate of Probation (2013), 'Living in a different world: A joint review of disability hate crime'. Available [here](#) [accessed: 17 November 2016]: This review found a lack of clarity and understanding as to what constitutes a disability hate crime and confusion between policy definitions and the statutory sentencing provision contained within section 146 of the Criminal Justice Act 2003.

<sup>305</sup> Joint Criminal Justice Inspection (2015), 'Joint review of disability hate crime follow-up'. Available [here](#) [accessed: 28 July 2017]

<sup>306</sup> COPFS (2017), 'Hate Crime in Scotland 2016-17'. Available [here](#) [accessed: 28 July 2017]: In 2016-17, 188 charges were reported with an aggravation of prejudice relating to disability, 6 per cent fewer than in 2015-16. This is the first year that the number of charges reported has fallen since the legislation creating this aggravation came into force in 2010. The report also acknowledges that Police Scotland and COPFS are carrying out activities to raise awareness about disability and encourage reporting

<sup>307</sup> Ibid.

<sup>308</sup> EHRC (2017, forthcoming), 'Tackling disability-related harassment: final report 2017. The final report is being finalised at the time of writing. The inquiry was carried out between 2009 and 2011. It found that disability-related harassment is a widespread but under-reported problem, which has a significant impact on the day to day lives of disabled people. See [here](#) [accessed: 28 July 2017]

<sup>309</sup> For example:: England and Wales: (1) The publication, in 2015, for the first time, of detailed findings from the Crime Survey for England and Wales on the extent of hate crime victimisation, including in respect of disability; (2) An improvement in the police recording of hate crime, developing the ability to better capture data on protected characteristics and publishing that data as official statistics; (3) The funding of a number of projects with voluntary sector organisations working with victims of disability hate crime under the Ministry of Justice's victims and witnesses funding programme. Scotland: The Scottish Government's 'Speak Up Against Hate Crime' campaign was launched in February 2014. The Crown Office and Procurator Fiscal Service (COPFS) criminal justice disability project, set up in 2013, is now well established. Wales: A Hate Crime Criminal Justice Board has been convened by the Welsh Government to ensure a co-ordinated response to dealing with hate crime.

<sup>310</sup> UKIM (2017), 'Disability Rights in the UK', p. 44; EHRC (2017), 'Being Disabled in Britain'.

<sup>311</sup> EHRC (2017, forthcoming), 'Tackling disability-related harassment: final report 2017.

**Wales.**<sup>312</sup> We remain concerned that no response to the recommendations has been received to date.

## 10.2 Bullying in schools

151. Disabled children and young people experience disproportionate levels of bullying in schools,<sup>313</sup> and no government department collects regular data.<sup>314 315</sup>

## 10.3 Violence against disabled women

152. Disabled women experience disproportionate levels of all forms of violence and abuse, and face additional barriers to accessing appropriate support.<sup>316</sup> Insufficient funding remains a major barrier.<sup>317</sup>

153. The UK Government is yet to ratify the Istanbul Convention.<sup>318</sup> The Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention)

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<sup>312</sup> Law Commission (2014), 'Hate crime: Should the current offences be extended?' Available [here](#) [accessed: 28 July 2017].

The five recognised strands of hate crime are not equally protected in law in either England and Wales or Scotland, for both the aggravated offences and the stirring up of hatred offences. This is potentially problematic for the effective prosecution of hate crime. Several critics have suggested that this may result in an unintended message being sent to the public that some groups are more worthy of protection than others. Noting that the PSED requires public authorities to have due regard to the need to reduce inequality, the Law Commission concluded that public authorities such as police forces need legislation in this area to provide clarity, and that the present system does not help in that regard, in that it treats some protected characteristics differently despite (1) all of them being protected for purposes of hostility-based offending (by the enhanced sentencing system) and (2) there being no obvious justification for the different legislative treatment.

<sup>313</sup> UKIM (2017), 'Disability Rights in the UK', p. 45: Despite initiatives, 40 per cent of children and young people with no disability reported being bullied in a 2015 survey, compared with: 58 per cent with a physical disability, 62 per cent with a learning disability, and 67 per cent with Autism/Asperger Syndrome.

<sup>314</sup> Ibid. 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].

<sup>315</sup> Ibid. There are some positive initiatives in place. 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*. [ONLINE]. 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>316</sup> UKIM (2017), 'Disability Rights in the UK', pp. 45-46

<sup>317</sup> Ibid.

Act 2017, which received Royal Assent on 27 April 2017,<sup>319</sup> puts pressure on the UK Government to ratify the Convention.<sup>320</sup>

154. The EHRC welcomes plans included in the 2017 Queen's Speech for a Draft Domestic Violence and Abuse Bill for **England and Wales** to strengthen access to justice and protection measures for victims.<sup>321</sup>

#### 10.4 Abuse in institutional settings and home care

155. There is evidence of abuse and neglect in institutional settings and home care, particularly of older disabled people and people with learning disabilities.<sup>322</sup>

156. As a result of shocking levels of abuse at a specialist unit in **England**, the UK Government introduced Transforming Care in 2012 to transfer more people with learning disabilities from institutional mental health settings into community settings. The UK Government say that there was a 12 per cent fall in the numbers of people with learning disabilities in specialist units and hospitals between March 2015 and February 2017, leaving 2,530 people with learning disabilities in mental health institutions as at March 2017.<sup>323</sup>

157. An EHRC inquiry found evidence in **GB** of poor treatment, including lack of food and water, unsanitary conditions and financial abuse and control of disabled people by carers.<sup>324</sup> While local authorities have taken action to improve their decision-making procedures in this area, there are concerns about the capping of prices for commissioned care costs, stating its potential to lead to future human rights violations.<sup>325</sup>

158. In 2013 concerns were raised regarding the issue of child sexual abuse in **Northern Ireland**.<sup>326</sup> The Northern Ireland Executive instituted a thematic review with the aim of

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<sup>318</sup> Council of Europe (no date), 'Convention on preventing and combating violence against women and domestic violence'. Available [here](#) [accessed: 28 July 2017].

<sup>319</sup> The Act amounts to a commitment to produce yearly reports on remaining obstacles and progress towards compliance with the Istanbul Convention, and set an expected ratification date once the UK is compliant.

<sup>320</sup> It started as a Private Members Bill, rather than a government bill. See [here](#) [accessed: 28 July 2017]

<sup>321</sup> Prime Minister's Office (2017), 'The Queen's Speech 2017', p. 8. Available [here](#) [accessed: 28 July 2017]

<sup>322</sup> See: EHRC (2011), 'Inquiry into the Home Care of Older People'. Available [here](#); The Kings Fund (2013), 'The Francis report'. Available [here](#); Department of Health (2012), 'Winterbourne View Hospital: Report and response'. Available [here](#) [all accessed: 28 July 2017]. 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 (2016), 'Statement regarding Connor Sparrowhawk's death'. Available [here](#) [accessed: 20 October 2016].

<sup>323</sup> Statistics are from an unpublished letter from the Under Secretary of State of Community Health and Care dated 21 March 2017 also referred to in footnote 285.

<sup>324</sup> EHRC (2011), 'Inquiry into the Home Care of Older People', pp. 33-34. Available [here](#) [accessed: 28 July 2017]

<sup>325</sup> EHRC (2013), 'Close to Home recommendations review', pp. 20-21. Available [here](#) [accessed 21 July 2017]

<sup>326</sup> Northern Ireland Policing Board (2013), 'Human Rights Annual Report 2013', p. 11.

identifying key learning points and opportunities for improvement.<sup>327</sup> An independent expert-led inquiry report, published in 2014,<sup>328</sup> identified a need for greater appreciation among key personnel of the links between disability and child sexual exploitation, emphasizing that staff in disability teams have the awareness and training to recognise vulnerability to sexual exploitation and other emerging child protection issues, and to respond appropriately by involving staff with more specialist child protection expertise.<sup>329</sup> It also highlighted the need to ensure greater awareness among disabled children of the risk of sexual exploitation.

159. In **Northern Ireland**, although the Mental Capacity (NI) Act 2016 introduces new offences of ill treatment or wilful neglect of a person who lacks capacity, the requirement to prove that a victim lacks capacity restricts the effectiveness of these offences to protect victims against abuse. There is a free-standing offence to address situations where a care worker ill-treats or neglects a person they care for in both Scotland, and England and Wales.<sup>330</sup> In April 2017 allegations of abuse at a number of care homes led to arrests by the police, underscoring the need for a robust legal framework to ensure the effective prosecution of abusers.<sup>331</sup>

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<sup>327</sup> See [here](#) [accessed: 28 July 2017]

<sup>328</sup> Marshall, K. (2014), 'Child Sexual Exploitation in Northern Ireland - Report of the Independent Inquiry'. Available [here](#) [accessed: 28 July 2017]. The report highlighted the need to develop greater understanding of the links between disability and child sexual exploitation; identified that incidents of sexual abuse of children with a disability may be under-reported; and highlighted the particular vulnerability of children with autism and the challenge posed by the internet.

<sup>329</sup> *Ibid.*, p. 149. The Marshall Report included 17 key recommendations and 60 supporting recommendations for improvement in combating child sexual exploitation, outlining measures for improved inter-agency working, education and awareness raising, training for professionals, funding of preventative services, engagement with communities, support for victims and the development of a regional strategy.

<sup>330</sup> S. 21 Criminal Justice and Courts Act 2015, c. 2. makes it an offence for an individual who has the care of another individual, by virtue of being a care worker, to ill-treat or wilfully neglect that individual. In addition section 22 creates a similar corporate offence where a care provider has committed a gross breach of a relevant duty of care. In addition part 34 of the Health (Tobacco, Nicotine, etc. and Care) (Scotland) Act 2016 introduced offences of wilful neglect or ill-treatment in Scotland for adults receiving health care or social care.

<sup>331</sup> Belfast Telegraph (2017), 'Northern Ireland care home staff arrested, by police after abuse claims', 25 April.



## 11. Autonomy and integrity (Articles 12, 14, 15, 17) – List of Issues questions 9 and 10

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### 11.1 The use of restraint

160. UKIM is concerned about the use of physical and/or chemical restraint in detention, healthcare and some education settings.<sup>332</sup>

161. While there are some welcome initiatives,<sup>333</sup> there are substantial issues with implementation. For example, in England and Wales:

- Notwithstanding the ‘Minimising and Managing Physical Restraint’ (MMPR) policy,<sup>334</sup> an inspection of its implementation in the youth offending estate has revealed serious concerns.<sup>335</sup>
- There are continuing criticisms about the widespread over-use of segregation in adult male prisons, including for people with pre-existing mental health conditions, and its detrimental impact.<sup>336</sup>
- Unlike the MMPR policy, there has been no similar review of the overall effectiveness of ‘Positive and Proactive Care’,<sup>337</sup> applicable in **England**. However, in its latest annual review of the Mental Health Act 1983, the CQC found that: ‘mechanical restraints are sometimes being used as a blanket measure when transporting patients off-site.’<sup>338</sup>

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<sup>332</sup> UKIM (2017), ‘Disability Rights in the UK’, pp. 47-48.

<sup>333</sup> See Office for Disability Issues (2017), ‘List of issues in relation to the initial report of the UK of GB and Northern Ireland: government response’, paras. 66-70. Available [here](#) [accessed: 25 July 2017]. In addition, the EHRC has welcomed NHS England guidance for General Practitioners to address inappropriate use of anti-psychotic medication for people with learning disabilities. Its impact in practice is yet to be seen, EHRC (2017), ‘Disability Rights in England’, p 28. We also note a related three-year awareness-raising project, STOMP, which will run until 2019. See [here](#) [accessed: 29 July 2017]

<sup>334</sup> Guidance on managing young people in secure training centres and young offender institutions, with restraint only used as a last resort. See [here](#) [accessed: 28 July 2017]

<sup>335</sup> Including the frequent use of pain-inducing restraint techniques and failure to adhere to plans when children with medical conditions are restrained: HM Inspectorate of Prisons (2015), ‘Behaviour management and restraint of children in custody’. Available [here](#) [accessed: 12 July 2017]. Also see summary of main findings [here](#) [accessed: 28 July 2017]

<sup>336</sup> HM Inspectorate of prisons (2016), ‘Annual Report 2015-15’. Available [here](#) [accessed: July 2017].

‘We continued to find high use of segregation, and were not assured that all uses were warranted. Prisoners were segregated for unacceptably long periods in some prisons..... Segregation units continued to provide impoverished regimes – they were inadequate in two-thirds of the prisons inspected, with little access to constructive activity... Most prisoners were locked up for more than 22 hours a day with nothing meaningful to occupy them. Some prisons even curtailed the already minimal access to showers and telephone calls as a punishment for minor rule breaking. Such isolation and lack of purposeful activity is almost bound to have a detrimental effect on the psychological welfare of prisoners... At half the prisons we visited this year, patients waited too long to be transferred to NHS mental health units, and were often left to languish in non-therapeutic segregation units for extended periods.’

<sup>337</sup> Advice for staff on the use of restrictive interventions for patients with difficult behaviour. See [here](#) [accessed: 28 July 2017]

<sup>338</sup> Care Quality Commission (2016), ‘Monitoring the Mental Health Act Report 2015/16’. Available [here](#) [accessed: 12 July 2017]. The examples given are for court or other appointments, or when given leave of

- The CQC expressed concerns about physical restraint, seclusion and over medication. Although there was good practice leading to a reduction of restraint and restrictive practices in some units, in others there was poor practice and inconsistent recording of physical restraint and seclusion. Between January 2015 and January 2016, face down restraint actually increased in high secure settings for people with learning disabilities.<sup>339</sup>

162. Recommendations related to restraint<sup>340</sup> from an EHRC inquiry, which found that physical restraint and segregation could be a direct or indirect cause of some non-natural deaths of adults with mental health conditions in prisons, police cells and hospitals, in **England and Wales**, have not been acted on.<sup>341</sup>

163. Further, half of prisons in **England and Wales** continue to locate prisoners at risk of suicide or self-harm in segregation units.<sup>342</sup> In his latest annual report, HM Chief Inspector of Prisons has expressed frustration at the widespread continuation of this practice despite recommendations from his inspectorate.<sup>343</sup> He has also cited 'major concerns about the governance and oversight of use of force and segregation'.<sup>344</sup>

164. The use of force to restrain people in police custody in **England and Wales** remains inconsistently recorded by frontline staff and is not systematically monitored by senior police managers, 'despite repeated recommendations over the years from HMIC/HMIP inspections.' In some cases, there were findings that police custody staff members do not perceive their intervention as a use of force.<sup>345</sup>

165. The Council of Europe's Committee for the Prevention of Torture (CPT) recently identified a range of concerns about forced treatment, the use of force on patients and the use of long-term segregation and night-time confinement in high secure hospitals in

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absence for leisure. The report notes a conflict between NICE and Department of Health guidance on the use of mechanical restraint and calls for the Department of Health to resolve this conflict.

<sup>339</sup> Care Quality Commission (2017), 'The State of Care in Mental Health Services 2014-17'. Available [here](#) [accessed: 25 July 2017]

<sup>340</sup> These recommendations include:

- Data on the use of restraint in the prison setting should be routinely published by the Ministry of Justice
- Segregation should not be used for prisoners with mental health conditions, unless there is an exceptional circumstance, which is clearly defined and understood by prison staff
- Independent Advisory Panel principles for safer restraint are fully acknowledged in the three settings. (For these principles see: Independent Advisory Panel on Deaths in Custody (2013), 'IAP Common Principles for Safer Restraint'. Available [here](#) [accessed: 28 July 2017]

<sup>341</sup> EHRC (2017), 'Disability Rights in England', pp. 27-28.

<sup>342</sup> HM Inspectorate of Prisons (2016), 'Annual Report 2015-16'. Available [here](#) [accessed: 12 July 2017]

<sup>343</sup> HMI Prisons (2017), 'HM Chief Inspector for England and Wales's Annual Report 2016-17', p. 21. Available [here](#) [accessed: 25 July 2017]: 'Despite our repeated recommendations, we continued to find men on ACCTs in segregation units with no exceptional reasons to justify this'. (Four men identified as at risk of suicide or self-harm took their own lives in segregation units during the year.

<sup>344</sup> HM Inspectorate of Prisons (2016), 'Annual Report 2015-16'. Available [here](#) [accessed: 12 July 2017]. Also HMI Prisons (2017), 'HM Chief Inspector for England and Wales's Annual Report 2016-17'.

<sup>345</sup> EHRC (2016), 'Healing a Divided Nation: the need for comprehensive race equality strategy'. Available [here](#) [accessed: 13 July 2017]



England. The CPT found that some patients had been held in long-term segregation for a period of years.<sup>346</sup>

166. A study of the Children’s Commissioner revealed that disabled children in the youth justice secure estate in **England** are more likely to have experienced isolation than non-disabled children.<sup>347</sup>

167. In **Northern Ireland**, the Mental Capacity (NI) Act 2016, which is yet to be commenced, makes provision for a statutory definition of restraint. However, this only applies in circumstances in which an individual is deemed to lack capacity.

## 11.2 Immigration detention

168. UKIM is concerned by:<sup>348</sup>

- Indications that immigration detention facilities are inadequately equipped for detainees with serious mental health conditions.
- There is no Home Office policy or procedure to ensure that immigration detainees who lack mental capacity are provided with independent support to assert their legal rights.
- The UK Government introduced new guidance and policies in September 2016<sup>349</sup> which recognise that some disabilities<sup>350</sup> indicate that detention may cause harm and lead to a presumption that detention is not appropriate. However, disabled people whose immigration risk factors and/or public protection concerns are deemed to outweigh the harm they may suffer can still be detained under the new policies, even if there is a risk of significant harm occurring.<sup>351 352</sup>

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<sup>346</sup> Council of Europe CPT (2016), ‘Report to the Government of the UK on the visit to the UK carried out by the European Committee for the Prevention of Torture, paras. 152-158. Available [here](#) [accessed: 30 July 2017]

<sup>347</sup> Children’s Commissioner (2015), ‘Unlocking potential: a study of the isolation of children in custody in England’. Available [here](#) [accessed: 27 July 2017] and Children’s Commissioner and Associate Development Solutions (2015), ‘Research report: Isolation and solitary confinement in the English youth justice system’. Available [here](#) [accessed: 27 July 2017]. The research found that disabled children are two-thirds more likely to have experienced isolation than non-disabled children. In Youth Offender Institutes disabled children were 77 per cent more likely to be isolated than non-disabled children.

<sup>348</sup> UKIM (2017), ‘Disability Rights in the UK’, pp. 48-49

<sup>349</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>350</sup> Such as mental health conditions or serious physical disability.

<sup>351</sup> Home Office (2016), ‘Government response to Stephen Shaw’s review into the welfare in detention of vulnerable persons’. Available [here](#) [accessed: 11 January 2017].

<sup>352</sup> Detention of Vulnerable Persons — [Geraint Davies in the Chair] – in Westminster Hall at 11:30 am on 14th March 2017. See [here](#) [accessed: 28 July 2017]

### 11.3 Supported/substitute decision-making frameworks

169. Legislation **across the UK** continues to provide for substitute decision-making.<sup>353</sup> The Essex Autonomy Project has made recommendations to reform legislation across England and Wales, Scotland and Northern Ireland to achieve CRPD compliance.<sup>354</sup>

170. **Northern Ireland** has introduced a single legislative framework for mental capacity and mental health which separates incapacity from identified disability.<sup>355</sup>

171. A review in **England and Wales** by the Law Commission published in March 2017 identified significant concern that the Mental Capacity Act 2005 (MCA) does not comply with the CRPD and recommended that the UK Government establish supported decision-making schemes.<sup>356</sup> It also proposed a draft Bill<sup>357</sup> to amend the MCA to establish duties to: ascertain, so far as reasonably practicable, the person's wishes and feelings, beliefs and values; and give particular weight to any wishes and feelings ascertained.<sup>358</sup> The UK Government has yet to respond to the proposal.

172. In **Scotland**, there are common issues in hospitals, care homes and prisons relating to failures to properly adhere to the requirements of mental health and incapacity legislation. There is also an ongoing shortage of Mental Health Officers, who provide an essential safeguard.<sup>359</sup>

173. A recent report sets out the case for reform of Scotland's mental health and capacity law to achieve compliance with the CRPD.<sup>360</sup> The Scottish Government has committed to review the Adults with Incapacity (Scotland) Act 2000. However, as yet no proposals for reform have been published<sup>361</sup>

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<sup>353</sup> UKIM (2017), 'Disability Rights in the UK', pp. 49-50: England/Wales: Mental Health Act 1983 as amended; Mental Capacity Act 2005. Scotland: Adults with Incapacity (Scotland) Act 2000 and Mental Health (Care & Treatment)(Scotland) Act 2004. Northern Ireland: Mental Capacity Act (Northern Ireland) 2016.

<sup>354</sup> UKIM (2017), 'Disability Rights in the UK', p. 50; The Essex Autonomy Project (2016), 'Three Jurisdictions Report'. Available [here](#) [accessed: 5 August 2016].

<sup>355</sup> UKIM (2017), 'Disability Rights in the UK', p. 49: Mental Capacity (NI) Act 2016 received royal assent on 9 May 2016. The legislation requires an individual to be provided with support to make a decision. However if this is unsuccessful a substitute decision may be taken.

<sup>356</sup> Law Commission, Mental Capacity and Deprivation of Liberty Summary, Law Com No 372 (Summary) 13 March 2017, para 102. Available [here](#) [accessed: 28 July 2017]. The Mental Capacity Act 2005 (MCA) continues to apply in England and Wales.

<sup>357</sup> The Mental Capacity (Amendment) Bill

<sup>358</sup> Law Commission (2017), Mental Capacity and Deprivation of Liberty, Law Com 372. Available [here](#) [accessed: 13 July 2017]. The Law Commission says they sought to draft the bill 'in the spirit the CRPD', in particular of Article 12 but note it is unlikely to comply with Article 14, p. 247.

<sup>359</sup> EHRC and SHRC (2017), 'Disability Rights in Scotland', pp.18-19

<sup>360</sup> Napier University Centre for Mental Health and Capacity Law and MWC (2017), 'Scotland's Mental Health and Capacity Law: the case for reform'. Available [here](#) [accessed: 28 July 2017]

<sup>361</sup> Scottish Government (2017), 'Mental Health Strategy 2017-2027'.

174. In Northern Ireland, when the Mental Capacity (NI) Act 2016 is commenced, it is important to ensure that provisions for supported decision-making contained within the Act are effective and accessible.<sup>362</sup>

#### 11.4 Deprivation of liberty

175. The EHRC is seriously concerned that the number of detentions under the Mental Health Act 1983 are continuing to increase in **England and Wales**.<sup>363</sup>

176. The UK Government has committed itself to reforming mental health law in **England and Wales**.<sup>364</sup> Before the 2017 General Election, the Prime Minister was widely reported identifying ‘unnecessary detention’ as a problem.<sup>365</sup> It is not clear whether the proposed reform will include proposals to align mental health law with CRPD Articles 12 and 14.

177. In the **UK**, 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>366 367</sup>

178. The Law Commission identified ‘a compelling case’ for replacing the deprivation of liberty safeguards (DoLS) within the Mental Capacity Act 2005 that apply in **England and Wales**.<sup>368</sup> The Law Commission has proposed a draft Bill to introduce a new DoLS scheme that places deprivation of liberty within the overall context of care and treatment arrangements, and increases the weight accorded to a person’s ‘wishes and feelings’. As yet there has been no response to the draft bill from the UK Government.

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<sup>362</sup> The Mental Capacity (NI) Act 2016 contains a specific section on supporting persons to make decisions themselves, this is considered an important measure to ensure persons with capacity issues are given practicable support. In addition under section 9 a person must not be deemed to lack capacity unless all practicable support has been given.

<sup>363</sup> The number of detentions under the Mental Health Act in NHS and independent hospitals increased from 46,600 in 2009/10 to 58,399 in 2014/15. There was a further 10 per cent increase between 2013/14 and a 9 per cent increase to 63,622 in 2016. The use of s. 136 of the Act (under which people were brought to hospital as a ‘place of safety’) also increased by 18 per cent to 22,965 in 2016. See: EHRC (2017), ‘Being Disabled in Britain’, p. 121.

<sup>364</sup> UK Government (2017), ‘Queen’s Speech’. Available [here](#) [accessed: 6 July 2017]

<sup>365</sup> For instance, see [here](#) [accessed: 28 July 2017]

<sup>366</sup> UKIM (2017), ‘Disability Rights in the UK’, p. 50

<sup>367</sup> A July 2017 report from the Local Government and Social Care Ombudsman found that ‘some people are being forced into situations against their will, without proper checks being carried out and safeguards put in place’. Local Government and Social Care Ombudsman (2017), ‘The Right to Decide: Towards a greater understanding of mental health capacity and deprivation of liberty’. Available [here](#) [accessed: 28 July 2017]

<sup>368</sup> The DoLS were introduced as a safeguard for people deemed to lack capacity who are deprived of their liberty in a care home or hospital, however, they are considered to have failed to deliver improved outcomes. See Law Commission (2017), ‘The Deprivation of Liberty Safeguards and the case for reform’, chapter 4. Available [here](#) [accessed: 28 July 2017]

179. In **Scotland** there are concerns<sup>369</sup> that people deprived of their liberty are ‘unable effectively to assert their rights’.<sup>370</sup> The Scottish Government has committed to addressing issues around deprivation of liberty as part of the reform of the incapacity law framework.<sup>371</sup>

180. The legal framework in **Scotland** for people with mental health conditions who require compulsory detention and treatment applies only to people who have a ‘mental disorder,’ and the definition includes learning disability. There has been, and still is, considerable debate about whether learning disability and autism should be included in mental health law and there have been calls for review.<sup>372</sup> The Scottish Government committed to this review, and the findings of a scoping study were published in January 2017.<sup>373</sup> However, no further announcements have been made about scope and timetable.

181. In its earlier submission UKIM raised concerns regarding the non-consensual use of electroconvulsive therapy in **Northern Ireland**.

## 12. Participation in political and public life (Article 29) – List of issues question 24

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### 12.1 Voting

182. Disabled people experience barriers to exercising their right to vote.<sup>374</sup>

183. A 2017 report found that the participation of disabled people in the voting system is ‘seen through the prism of compliance rather than inclusion’ and identified ‘barriers not just in the physical act of voting, but in joining the electoral register and accessing information about elections, candidates, and party policies’.<sup>375</sup>

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<sup>369</sup> 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].

<sup>370</sup> Napier University Centre for Mental Health & Capacity Law and MWC (2017), ‘Scotland’s Mental Health and Capacity Law: the case for reform’. Available [here](#) [accessed: 28 July 2017]

<sup>371</sup> Scottish Government (2017), ‘Mental Health Strategy 2017-2027’. Available [here](#) [accessed: 28 July 2017]

<sup>372</sup> See, for example, People First (Scotland) (2011) Citizens’ Grand Jury Report, pp.40-42. Available [here](#) [accessed: 28 July 2017]

<sup>373</sup> Scottish Government (2017), ‘Review of learning disability and autism in the Mental Health (Scotland) Act 2003: Findings from a scoping exercise’. Available [here](#) [accessed: 28 July 2017]

<sup>374</sup> UKIM (2017), ‘Disability Rights in the UK’, p. 50

<sup>375</sup> The Institute for Democracy (2017), ‘Improving access to elections with digital democracy’. Available [here](#) [accessed: 28 July 2017]

## 12.2 Elected representatives

184. Disabled people are under-represented in political life **across the UK**, and the collection of information about candidates and elected officials' protected characteristics needs to be improved.<sup>376</sup>

185. Following the General Election on 8 June 2017, media reports stated that less than one per cent of Members of Parliament have declared that they have a disability.<sup>377</sup> Disabled people are similarly under-represented in the devolved Parliaments/Assemblies.<sup>378</sup>

186. A significant obstacle to disabled people standing for election is additional disability-related costs they can incur. The Access to Elected Office Fund<sup>379</sup> set up in 2012 for elections to the UK Parliament (General Election) and local elections in England was closed in 2015.<sup>380</sup> In the absence of the Fund,<sup>381</sup> many disabled candidates in the June 2017 General Election were unable to meet additional disability-related costs.<sup>382</sup> An Early Day Motion (EDM)<sup>383</sup> tabled in June 2017 reiterates key concerns. The Scottish Government set up a comparable fund for the Scottish Local Government election in 2016, and due to its success has extended it to cover the Scottish Parliament election in 2021.

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<sup>376</sup> UKIM (2017), 'Disability Rights in the UK', p. 51

<sup>377</sup> Booth, R. (2017), 'New intake brings number of disabled MPs in Commons to five'. [ONLINE]. *The Guardian*. 11 June. Available [here](#) [accessed: 28 July 2017]; Rampen, J. (2017), 'How representative is parliament after the general election 2017?' [ONLINE]. *New Statesman*. 9 June. Available [here](#) [accessed: 28 July 2017]; Wilson, C. (2017), 'Election results 2017: The most diverse Parliament yet'. [ONLINE]. *BBC News*. 11 June. Available [here](#) [accessed: 28 July 2017]

<sup>378</sup> UKIM (2017), 'Disability Rights in the UK', pp. 51-52.

<sup>379</sup> See: HM Government (2015), 'Welcome to the Access to Elected Office for Disabled People Fund'. Available [here](#) [accessed: 11 September 2015].

<sup>380</sup> UKIM (2017), 'Disability Rights in the UK', p. 52

<sup>381</sup> Note: Under the Equality Act 2010, political parties have legal duties to make reasonable adjustments that enable disabled people to overcome disadvantages in becoming a member of the party. The reasonable adjustments duties on political parties also require them to address disadvantages disabled members' experience in accessing membership benefits or using any facilities and services connected to membership. Adjustments can take the form of changes to policies, practices or procedures, the provision of auxiliary aids and/or adaptations to the physical features of premises. Similar provisions are in place in Northern Ireland through the Disability Discrimination Act 1995 and the Disability Discrimination (Private Clubs, etc.) Regulations (Northern Ireland) 2008. However, the Access to Elected Office fund was piloted to ensure disabled people *running* for elected office had a level playing field with non-disabled people. For example, providing financial assistance with British Sign Language interpreters and travel costs where public transport is inaccessible.

<sup>382</sup> Ryan, F. (2017), 'Why are so few disabled candidates standing for parliament?' [ONLINE]. *The Guardian*. 24 May. Available [here](#) [accessed: 28 July 2017]. See also Early Day Motion 999. Available [here](#) [accessed: 28 July 2017].

<sup>383</sup> Early Day Motion 74: Access to Elected Office Fund (28.06.2017). Available [here](#) [accessed: 28 July 2017]. The EDM notes the continued under-representation of disabled people in politics; highlights the continued failure of the UK Government to release its evaluation of or replace the Access to Elected Office Fund, and endorses the EHRC's recommendations to reopen or replace the fund. The EDM has gained the support of 50 MPs at the time of writing.

## 12.3 Public appointments

187. Disabled people continue to be under-represented on public boards across the UK,<sup>384</sup> notwithstanding some progress on appointing disabled candidates in **England and Wales** according to the latest figures.<sup>385</sup>

## 13. Statistics and data collection (Article 31) – List of issues question 26

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### 13.1 Data gaps and lack of disaggregated data

188. There are significant disability data gaps **across the UK**, and limited availability of data disaggregated by impairment type. This inhibits effective monitoring and reporting of CRPD compliance.<sup>386</sup>

189. There are a number of data gaps across **GB** in relation to education; work; standard of living; health and care; justice and detention; and participation and identity.<sup>387</sup> More needs to be done to improve the evidence base about issues facing disabled people, including the experiences and outcomes of disabled people with specific or multiple impairments, and to disabled people of different ethnic groups, ages or sexual orientations'.<sup>388</sup>

190. The Office for National Statistics (ONS) has stated that it will not be including questions seeking data on impairment type in the 2021 Census.<sup>389</sup> However, the White Paper with proposals for the Census will not go before Parliament until spring 2018.

191. In **Northern Ireland**, the draft Delivery Plan for Programme for Government commits the NI Executive to a data development agenda.<sup>390</sup>

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<sup>384</sup> UKIM (2017), 'Disability Rights in the UK', p. 52.

<sup>385</sup> The Commissioner for Public Appointments (2017), 'Annual Report 2016/17', pp. 17-18. Available [here](#) [accessed: 28 July 2017]

<sup>386</sup> UKIM (2017), 'Disability Rights in the UK', p. 53

<sup>387</sup> EHRC (2017), 'Being disabled in Britain: A journey less equal', available [here](#). For example, in relation to participation and identity, there is a lack of disability data on elected representatives at national level; a lack of data about the House of Lords; and no reliable statistics on the media representation of disabled people.

<sup>388</sup> Ibid.

<sup>389</sup> Correspondence between ONS and EHRC, 5 May 2017.

<sup>390</sup> To: (i) establish the prevalence of disability and (ii) develop a measure to capture the extent to which the differing needs of a diverse population of persons with disabilities are met. Source: The Northern Ireland Executive (2016), 'Draft Delivery Plan for Programme for Government Indicator 42, Average life satisfaction score of people with disabilities', p. 16. Available [here](#) [accessed: 28 July 2017]



## 14. National implementation and monitoring (Article 33) – List of issues question 29

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### 14.1 Independent Mechanism

192. With the exception of a one-off grant in Northern Ireland,<sup>391</sup> the members of UKIM have not received funding to carry out their additional mandate to promote, protect and monitor the implementation of the Convention.<sup>392</sup> Further, the Commissions<sup>393</sup> have all had to manage significant budget reductions since being designated as the Independent Mechanism.

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<sup>391</sup> In 2008, the ECNI and NIHRC funding bid of £237, 538 was submitted to the Office for Disability Issues (ODI). However, only £13,500 was received for one-off project to promote the Convention with disabled people.

<sup>392</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](#) [28 July 2017].

<sup>393</sup> Between 2010-2016 the UK Government reduced the EHRC budget by nearly 70 per cent and a further budget reduction of 25 per cent was announced in the 2016-17 Comprehensive Spending Review. Budget reductions have taken place alongside the removal of some of the EHRC's powers and functions through the Enterprise and Regulatory Reform Act 2013. For further information on the EHRC's budget reduction see [here](#) [accessed: 28 July 2017]

SHRC's budget was reduced by 15 per cent in real terms over a period of three years between 2011/12 and 2013/14, budgets have remained at the reduced level since then. SHRC's cash budget was £1,000,000 in 2010/11 and for 2017/18 is £991,000.

ECNI has experienced budget reductions, imposed by Government, of between three to five per cent per annum over the last five years. The NIHRC has experienced a reduction in its cash budget from £1,702,000 in 2009/10 to £1,149,000 in 2016/17, with an annual decrease by £25,000 each year until 2019-20.



## Contacts

This publication and related equality and human rights resources are available from the [Equality and Human Rights Commission](#), [Equality Commission for Northern Ireland](#), [Northern Ireland Human Rights Commission](#) and [Scottish Human Rights Commission](#) websites.

For advice, information or guidance on equality, discrimination or human rights issues, please contact the [Equality Advisory and Support Service](#), a free and independent service.

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