

Implementation of the United Nations Convention on the Rights of Persons with Disabilities

Alternative report - Great Britain

Led by Inclusion Scotland, Disability Rights UK and
Disability Wales

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1. About this report

This report provides an independent assessment of implementation of the United Nations Convention on the Rights of persons with disabilities in Great Britain.

Its production has been led by Disability Rights UK¹, Disability Wales² and Inclusion Scotland³ with support from Neil Crowther⁴ and the assistance of Steering Groups in England, Wales and Scotland.^{5,6}

The Great Britain report is a synthesis of separate reports produced concerning implementation of the CRPD in England and Wales and in Scotland. These have been submitted to the Committee as supplementary evidence. The reports do not address the situation concerning the rights of disabled people in Northern Ireland.⁷

1.1. Structure

The report is structured around the articles in the Convention. Some areas of policy and legislation concerning England, Wales and Scotland remain the sole responsibility of the UK government, whereas others have been devolved to the Scottish Government or Welsh Government, or there is shared competency. Where relevant we have provided evidence and targeted suggested questions at the devolved governments of Wales and Scotland. The scope of devolution to Scotland and Wales is explained in the annex.

¹ Disability Rights UK is a membership organization led by disabled people primarily working in England <http://www.disabilityrightsuk.org>

² Disability Wales membership organization of disabled people's organisations across Wales and is led by disabled people <http://www.disabilitywales.org/about-us/>

³ Inclusion Scotland - consortium of disabled people's organisations and disabled individuals, established in 2001 and working mostly in Scotland. Challenges the physical, social, economic, cultural and attitudinal barriers affecting the everyday lives of disabled people. Aims to overcome the social exclusion of disabled people through civil dialogue, partnerships, capacity building, education, persuasion, training and advocacy.

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⁷ The Equality and Human Rights Commission and Scottish Human Rights Commission covering England, Wales and Scotland funded the production of these reports. Funding was not made available for equivalent work in Northern Ireland.

The reports have been funded by Equality and Human Rights Commission and the Scottish Human Rights Commission.

1.2. How the report was produced

This report is the result of extensive engagement with disabled people in England, Wales and Scotland. Our engagement included:

- Reports from civil society organisations, including steering group members;
- Online survey asking qualitative questions about issues disabled people want to see highlighted (487 responses).
- 18 engagement events (in London, Manchester, Leeds, Newcastle, Plymouth, Southampton, Birmingham, Cardiff, Wrexham, Llanelli, Edinburgh, Glasgow and Inverness) outlining the UNCRPD and asking what issues should be highlighted (attended by around 400 disabled people).
- Meeting specific groups, including CHANGE (Learning Disabled People), Deep (the UK network of Dementia Voices) and Freedom from Torture (on issues pertaining to refugees and asylum seekers).

Terminology

We used the term '**disabled people**', rather than the term 'persons with disabilities' as employed by the UNCRPD. This reflects our commitment to the Social Model of disability and respects the theory, principles and terminology agreed by the UK disabled people's movement. This term does not however conflict with the definition of disability employed by the UNCRPD. We use '**people with learning disabilities**' rather than 'persons with intellectual disabilities' or, indeed, 'learning disabled people'. This reflects the self-definition of those in the learning disability community. We refer to '**Deaf**' people, meaning users of British Sign Language (BSL); and we use '**deaf**' people when we mean people with hearing impairments who do not use BSL.

2. Summary of Top Twenty Issues of Concern

2.1. Measures to reduce public expenditure are having a disproportionate and retrogressive impact on the rights of disabled people

We fully endorse the findings and recommendations of the CRPD Committee's inquiry of the United Kingdom under Article 6 of the Optional Protocol, published on 7th November 2016. We are disappointed by the dismissive tone and non-substantive response of the state party.

We would like the Committee to note that since its inquiry the UK Government has announced, proposed or implemented further retrogressive measures. This includes a cut of £30 per week and the introduction of conditionality for those in receipt of Employment Support Allowance (ESA) and in the Work Related Activity Group.

We look forward to the Committee's further scrutiny of the UK Government during its examination of the United Kingdom in 2017, and will provide further more detailed analysis to support this in our forthcoming shadow report.

2.2. Articles 4 & 33.1 – Implementation of the Convention: Action to implement the Convention is inconsistent across England, Wales and Scotland.

Since ratification (2009) the Office for Disability Issues has been subject to a significant reduction in resources, including staff. It is unclear by what mechanism it provides direction, monitors and ensures implementation of the Convention across UK government departments, the devolved jurisdictions, local government and public bodies. The Convention is not consistently taken into account in policy making and it is unclear how the UK government ensures that public bodies comply with its requirements.

The Scottish Government published its UNCRPD Delivery Plan on 2nd December 2016. This followed a period of consultation with disabled people and their organisations. The Framework for Action on Independent Living sets out how Welsh Government is fulfilling its obligations under the UNCRPD, however it is not consistently taken into account in policy making. Nor is there a strategy in place to promote the Convention or its implementation.

2.3. Article 33.2 & 33.3 – Protecting, promoting and enforcing implementation: There has been systematic disinvestment in rights promotion and enforcement

Since 2010 the budget of the Equality and Human Rights Commission (EHRC) has been cut by 75%, which is disproportionate compared with average real cuts to government department spending: 9.7% from 2010/11-2015/16. This has severely restricted the Commission's capacity to promote and enforce equality legislation and disabled people's rights.

It has now been required to implement a further 25% cut to its current budget. This will reduce staffing levels to 176, compared to 525 staff in 2007/8.

The government has also repealed the duties and powers of the Commission and limited its capacity to discharge its existing powers, via the targeted cutting of financial support. For example, the Commission no longer has a duty to promote good relations and no longer arranges conciliation. The Commission's statutory Disability Committee will cease to exist in 2017.

The government has not identified a framework under Article 33.2 beyond the four equality and human rights bodies in England and Wales, Scotland and Northern Ireland.

2.4. Article 5 – Equality and non-discrimination: There are gaps in the scope of duties to provide reasonable accommodation

The UK government has not commenced provisions in the Equality Act (2010) relating to reasonable adjustments in common parts of buildings. Schools are not under a statutory duty to make reasonable adjustments in relation to physical features. This exemption is non-compliant with the requirements of Article 5 (3) of the CRPD.

2.5. Measures to achieve de facto equality are flawed

Section 149 of the Equality Act 2010 is the 'Public Sector Equality Duty'. This places duties on public bodies to have due regard to eliminating discrimination, advancing equality and promoting good relations. This is a 'duty of process' rather than outcome. Thus, public bodies can make nil progress and still be judged to be in compliance. The UK House of Lords has called for the Duty to be amended to focus on the achievement of equality outcomes.

2.6. Article 6 – Women with disabilities: Social security changes will have a detrimental impact on the rights of disabled women

New UK government social security policy disregards the intersection of disability and gender. For example, paying Universal Credit to one 'household' will help to perpetuate asymmetric power relations between partners. This is particularly concerning for disabled women, who are already more vulnerable to domestic violence.

2.7. Article 7 – Children with disabilities: There is no comprehensive strategy for the inclusion of disabled children

We note that the UN Committee on the Rights of the Child (the UNCRC) has voiced its concern that in the UK there is no comprehensive national strategy for the inclusion of disabled children. We echo this concern. For example, the number and proportion of children with special educational needs attending special schools across England, Scotland and Wales is on upward trend, while the numbers attending mainstream secondary schools is declining. We additionally note that disabled children are more likely to be living in poverty than non-disabled children, and Universal Credit (UC), will reduce the payment for disabled children by around £1,500 each per year for 100,000 families across the UK. Combined with the gendered impact of UC detailed above, we are concerned that the care of disabled children will be adversely impacted.

2.8. Article 8 – Awareness raising: Negativity and suspicion underpin narratives about disability, and there are few strategic or consistent efforts to counter this

An increase in negative media portrayals of disabled people has been documented. This is despite some positive attitudinal change reported after the London 2012 Paralympic Games, as well as specific campaigns like the Time to Change mental health anti-stigma campaign and See Me. There have been few strategic or consistent efforts – including disability awareness in education - to challenge attitudes more broadly. This is despite the Equality Act 2010 requiring public bodies to 'tackle prejudice and promote understanding'.

2.9. Article 9 – Accessibility [plus Article 28 – Adequate Standard of Living and Social Protection; Article 21 Freedom of Expression; Article 29 Participation in Political and Public Life: Accessibility in housing and the built environment is not adequately promoted

There is a UK wide shortage of accessible homes, and no legal or regulatory mechanism to guarantee the increased supply of accessible housing. This means, for example, that 201,000 Scottish households could be treated as homeless under the Housing (Scotland) Act 1987 because they cannot access essential facilities.

A 'shared space' scheme is being implemented across the UK. This means pedestrians and vehicles sharing spaces, without the usual pedestrian safety features. Disabled people have not been adequately consulted, and consistently report 'terrifying' experiences where these schemes are rolled out.

2.10. The inaccessibility of information and services continues to be a major problem

Accessible information for people with learning disabilities, Deaf people and people with hearing impairments is not provided in a timely way. This impacts on political and civic participation (article 29), freedom of expression (article 21) and health information. Political information and consultation materials are issued in Easy Read format and British Sign Language later than standard versions, if at all. This impairs the ability of disabled people to obtain information and participate on an equal basis with others.

2.11. Article 10 – Right to Life: The number of disabled people dying while in state care has risen. However, there is no system of independent investigation mechanisms following such deaths

Deaths in police, prison or immigration detention - or following contact with state agents – require a coroner's inquest based on an independent investigation by the Independent Police Complaints Commission (IPCC) or the Prisons and Probation Ombudsman (PPO). However, there is no equivalent mechanism to scrutinise deaths in mental health settings or in the context of care for people with learning disabilities. Instead, the inquest is reliant pre-inquest on the internal reviews and investigations conducted by the same trust responsible for the patient's care.

2.12. Article 12 – Equal recognition before the law: Laws concerning legal capacity in England, Wales and Scotland are non-compliant

The laws concerning legal capacity in England & Wales - the Mental Capacity Act (2005) and the Adults with Incapacity Act (Scotland) 2000) do not comply with Article 12 of the UNCRPD. They permit legal capacity to be denied on the dual basis of mental incapacity and disability. Further, mental health legislation in Scotland treats people with learning disabilities as having a mental disorder. Overall, this undermines respect for the rights, will and preferences of disabled people. Additionally, available 'support' is not extended to 'support in the exercise of legal capacity' but limited to 'communication' in the context of the Scottish statute, or support for decision-making capacity in the legislation covering England and Wales.

2.13. Article 13 – Access to Justice: There are significant barriers to justice for disabled people across the UK

Since Employment Tribunal fees were introduced in July 2013, disability discrimination claims have fallen by 54%. The Scottish Government announced in September 2015 that it would abolish such fees in Scotland.

2.14. Legal aid reforms will disproportionately affect the rights of disabled people

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 removed numerous areas of law from the scope of civil legal aid, including employment cases (with the exception of discrimination) and most housing, debt and social security benefit cases. Disabled people relied more on legal aid services and are likely to be disproportionately affected by the reforms. There are no Disability Law Centres in Scotland or Wales, but there are 11 in England. The lack of lawyers with disability specialism and the diminished capacity of the Equality and Human Rights Commission, means that disabled people in Scotland and Wales struggle to obtain legal support.

2.15. Article 14 – Liberty and security of the person: National legislation is permitting a rising number of disabled people to be deprived of their liberty on the basis of disability

Compulsory detention and treatment under the Mental Health Act 1983 has increased significantly, particularly over the last decade.

Compulsory Treatment Orders (CTOs) were used 4564 times in 2014-15 despite the intention that they would only be used 400-600 times.

In England and Wales 206,010 individuals were the subject to at least one active Deprivation of Liberty Safeguards application under the Mental Capacity Act 2005 in 2014/15. Over half were people with dementia, and a significant minority were adults with learning disabilities.

The Law Commission for England and Wales has noted advice by the UN High Commissioner on Human Rights that to comply with the CRPD, legal grounds for detention must be “de-linked from the disability and neutrally defined so as to apply to all persons on an equal basis”. It concluded that ‘it is difficult to see that the Mental Capacity Act (or indeed all mental health and capacity law in the United Kingdom) is remotely compliant with the CRPD.’

The Mental Health Act (1983) (England and Wales) and Scottish Mental Health Act (2007) are completely non-compliant with the CRPD as they permit or require compulsory detention and treatment on grounds that include disability (mental disorder).

2.16. Article 16 – Freedom from torture, inhuman or degrading treatment and punishment: The use of restraint, seclusion and medication in care settings is commonplace.

This particularly applies to mental health treatment settings and care settings for adults with learning disabilities. Evidence demonstrates that anti-psychotic and anti-depressant drugs are being routinely and inappropriately prescribed to persons with learning disabilities and there is growing concern about the inappropriate use of antipsychotic drugs for dementia patients living in residential or nursing care homes.

2.17. Immigration detention violates the rights of persons with mental health problems

Evidence strongly suggests that significant numbers of those detained under immigration rules in England and Wales experience acute mental health problems, related both to their past life and to their conditions of detention. Moreover, their situation and treatment may often amount to a grave and systemic violation of the right to freedom from torture, inhuman and degrading treatment. An independent review into the welfare of ‘vulnerable persons’ in detention published in January 2016 suggested that such grave violations were systemic.

2.18. Article 19 – Right to live independently and to be included in the community: Policy, practice and law in England, Wales and Scotland fail to protect and promote Article 19 rights

The law around care and support in England, Scotland and Wales does not provide disabled people with a right to independent living. Independent living is alluded to via a principle of wellbeing, and there are some important legal provisions related to choice and control. However, the absence of a statutory right to independent living undermines disabled people's ability to exercise choice and control in their care. Further, Self-Directed-Support, the delivery mechanism for social care and the 'personalisation' agenda, is significantly under-resourced.

There is a lack of national coordination around article 19 rights. In Wales, implementation of the National Framework for Action on Independent living is frustrated by a lack of local-level accountability. In Scotland the Health and Social Care Integration (HSCI) agenda undermines independent living, with an overriding focus on 'health' at the expense of 'social care'. Disabled people have thus far not been adequately consulted as HSCI is shaped.

2.19. Article 25 – Health: Disabled people's ability to obtain and sustain health is being systematically undermined

Restricted access to, and the maladministration of social security entitlements is removing vital health management resources from disabled people. Overall, the state party exhibits a poor grasp of preventative health measures. For example, mental health services are needed more than ever but are chronically underfunded; and there are ongoing accessibility issues with measures such as breast cancer screening.

Disabled people, including those with learning disabilities or mental health conditions, continue to have a significantly shorter life expectancy than the general population.

2.20. Article 27 – Work and employment: The employment gap between disabled and non-disabled people has remained at around 30% for over a decade

The employment gap between disabled people and non-disabled people is currently 32%. The UK government is committed to halving the gap, but recently called the target 'aspiration' and has not offered a timescale in which this might be achieved.

Measures to support disabled people into work through national programmes have proved mostly ineffective, although there have been very positive specific examples at local level. In October 2016 the UK Government launched a Green Paper detailing a new approach to employment support, with better individual tailoring of support and a greater emphasis on peer support. However, there are a number of areas in the paper which cause concern; and the Employment Related Support Association estimates that the planned reduction in funding from the current Work Programme and Work Choice to the new Work and Health Programme will in fact lead to a reduction in numbers of disabled people supported from 300,000 to 160,000 over a 2.5-year period.

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3. Implementation of the Convention on the Rights of Disabled People in Great Britain

3.1. Article 4 - General Obligations

There is a general failure to have due regard to the Convention in policy making

In its 2012 inquiry report into implementation of the right to independent living, the Joint Parliamentary Committee on Human Rights concluded that 'Inadequate attention has been paid to the impact of relevant policy on the implementation of the UNCRPD, in contravention of Article 4(1) and 4(3).'⁸ There remains little evidence that the UK government is consistently taking account of the CRPD in developing policy and making decisions. In some cases, such as in the development of the Care Act 2014 the provisions of the CRPD were explicitly rejected.⁹

Failure to ensure that all public authorities and institutions act in conformity with the Convention

In England, Scotland and Wales, power to take many of the most significant decisions determining whether or not disabled people enjoy their human rights, such as in relation to health, social care and public transport increasingly resides with regional, local and other national bodies. For instance, in England, budgets and a range of public spending decisions are increasingly being devolved to 'devolution deal' geographical areas like Greater Manchester or London. The UK Initial Report does not provide information about the measures taken to ensure that such bodies recognise and implement the rights in the Convention.

Laws and policies inconsistent with the Convention and which lead to retrogression continue to be implemented

Since the CRPD was ratified by the UK in 2009 there has been a dramatic programme of reform and public spending decisions that individually and cumulatively have severely impeded the rights of disabled people. In some policy areas, practices are being encouraged or go unchallenged which are at odds with the principles and intention of the CRPD, such as rising numbers of children attending special schools.¹⁰

⁸ Implementation of the Right of Disabled People to Independent Living - Twenty-third Report of Session 2010–12 (March 2012) Joint Parliamentary Committee on Human Rights

⁹ See para 4.6 of Adult Social Care (May 2011) Law Commission report
http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc326_adult_social_care.pdf

¹⁰ See under Article 24

Disabled people not involved in the development of law and policy or in decision making in a consistent way

When the UK Government submitted its initial report on the CRPD in 2011 it referred to several ways that it was involving disabled people in monitoring implementation of the Convention, including via the 'Network of Networks' and 'Equality 2025'. These mechanisms no longer exist and whilst a Fulfilling Potential Forum has been established, it is unclear whether the replacements replicate the extent and depth of involvement envisaged by the UNCRPD – particularly in relation to monitoring progress in implementing the Convention. For example, in October 2016 the Government announced that it would be withdrawing financial support for the National Forum of People with Learning Disabilities.¹¹ Short consultation deadlines, and delayed issue of Easy Read information frequently frustrates the ability of disabled people to influence policy making.¹²

Suggested question:

To ask the State Party what steps it is taking to involve disabled people in monitoring progress in implementing the CRPD

3.2. Article 5 - Equality and non-discrimination

The UK has not ratified Protocol 12 of the European Convention on Human Rights.

This provides a freestanding right to non-discrimination before the law.¹³

The Equality Act 2010 is poorly implemented.¹⁴

The Act has been framed by the UK Government as a regulatory burden on business and public bodies.¹⁵ To these ends, the UK government has

¹¹ See: <http://nationalforums.co.uk/shared/shared-news/important-news-about-our-future-funding>

¹² For example, UK Government's consultation on 'Aids and Appliances' in Personal Independence Payment (PIP) was released with a short response timescale, which included the Christmas and New Year holiday.

¹³ Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177>

¹⁴ Key problems identified by a 2016 House of Lords Inquiry include: Cuts of over 75% to the budget of the Equality and Human Rights Commission since 2010; Refusal by Ministers to lay draft Codes of Practice before Parliament so denying their statutory status and force; The introduction of fees to bring claims to employment tribunals which has seen a 54% decline in disability discrimination claims since 2013 See: The Equality Act 2010: impact on disabled people <http://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11702.htm>

¹⁵ See for example: Equalities Red Tape Challenge <https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome>; David Cameron calls time on 'Labour's Equality Impact Assessments' <http://www.bbc.co.uk/news/uk-politics-20400747>; The Review of the Public Sector Equality Duty

refused to lay draft Codes of Practice concerning education and the Public Sector Equality Duty before Parliament, depriving rights holders, duty bearers and the Courts of authoritative statutory guidance.

Suggested question:

To ask the State Party what further steps it is taking to ensure that the Equality Act 2010 is fully effective in tackling discrimination and promoting equality of opportunity for disabled people

There remain gaps in Britain’s reasonable accommodation provisions.

The UK government has delayed commencement of provisions concerning reasonable adjustments in common parts of buildings, subjecting them to further review.^{16,17} The House of Lords Select Committee on the impact of the Equality Act on disabled people (2016) expressed its frustration with this ongoing delay, but the government responded that the matter would be the object of further review. Schools have no statutory duty to make reasonable adjustments in relation to physical features.¹⁸ This exemption is non-compliant with Article 5 (3) of the CRPD.

Suggested question:

To ask the State Party to provide a timescale for the implementation of Part 4 s36 of the Equality Act 2010 concerning reasonable adjustments to common parts of buildings and that it considers extending the duty to make reasonable adjustments concerning physical features to schools.

Measures to accelerate or achieve de facto equality focus on process rather than outcomes

Public bodies must have due regard to eliminating discrimination, advancing equality and promoting good relations (the Public Sector Equality Duty). However, as this is a ‘duty of process’ rather than

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/237194/Review_of_the_Public_Sector_Equality_Duty_by_the_Independent_Steering_Group.pdf

¹⁶ The Equality Act 2010 Part 4 S36 <http://www.legislation.gov.uk/ukpga/2010/15/section/36>

¹⁷ Government response to the House of Lords Select Committee report on the Impact of the Equality Act 2010 on disabled people, response to recommendation 20 (p16) <https://www.parliament.uk/documents/lords-committees/equality-act/Govt-Response-to-HoL-SC-Report-on-the-EA2010.pdf>

¹⁸ In 2003 the government imposed a ‘planning duty’ on schools and local authorities aimed at ‘improving the physical environments of schools for the purpose of increasing the extent to which disabled pupils are able to take advantage of education and benefits, facilities or services provided or offered by the schools.’ Although subject to inspection by the schools inspectorates for England and Wales, the duty is not enforceable and remedy is not available to parents and guardians of disabled children. (Equality Act Schedule 10 <http://www.legislation.gov.uk/ukpga/2010/15/schedule/10>)

outcome, public bodies can make no progress towards the aims of the general duty yet be judged by courts to be in compliance. In its inquiry into the impact of the Equality Act on disabled people, the House of Lords recommended that:

‘a new subsection should be added to section 149: “To comply with the duties in this section, a public authority in the exercise of its functions, or a person within subsection (2) in the exercise of its public functions, shall take all proportionate steps towards the achievement of the matters mentioned in subsection (1).’^{19,20}

Suggested question:

To ask the State Party to outline how it will address the weakness of the current Public Sector Equality Duty and ensure that public bodies take proactive steps to advance equality for disabled persons.

No duty to involve disabled people in England

Whereas in Scotland and Wales public authorities are required by law to involve disabled persons in the steps they take to meet the Public Sector Equality Duty^{21,22}, public authorities in England are not.²³ The duty to involve included in the predecessor Disability Equality Duty had provided a central vehicle for government to ensure compliance with pre-ambular 15, Articles 4(3) and 33 (3) of the CRPD.

Suggested question:

Can the State Party to outline its measures to ensure that public authorities comply with Article 4 (3) of the CRPD (involving disabled persons)?

Abortion Law

Current abortion law allows the termination of disabled fetuses up until birth, whilst non-disabled fetuses can only be terminated up until 24 weeks. The number of pregnancies terminated on the grounds of

¹⁹ House of Lords Select Committee (2016) The Equality Act 2010: impact on disabled people paras 332-336 <http://www.publications.parliament.uk/pa/ld201516/ldselect/lddegact/117/11702.htm>

²⁰ In response the government said that ‘it was considering a further review of the Public Sector Equality Duty and that it would ensure that the Select Committee’s concerns and recommendations are taken into account in any such review.’ Government Response to the House of Lords Select Committee Report on The Equality Act 2010: The impact on disabled people (rec 31, p24)

²¹ See: <https://www.equalityhumanrights.com/en/advice-and-guidance/guides-psed-wales>

²² <https://www.equalityhumanrights.com/en/publication-download/involvement-and-public-sector-equality-duty-guide-public-authorities-scotland>

²³ See: <https://www.equalityhumanrights.com/en/publication-download/engagement-and-equality-duty>

disability as a percentage of all terminations has increased by 56% over the past five years.²⁴ We are concerned that this reflects a culture where disabled babies are less valued and their parents are not given adequate support to prepare and care for a disabled child. This situation needs to be addressed from the principle of equality.

3.3. Article 6 - Women with disabilities

Disabled women in Great Britain experience multiple forms of discrimination and disadvantage, which are referenced throughout this report.

To these ends, the Equality Act 2010 included provisions to prohibit 'combined discrimination' related to 'dual characteristics.' However, the UK government announced (15 May 2012) that it would delay implementation of section 14 of the Equality Act (2010) which concerns 'combined discrimination' related to 'dual characteristics'.²⁵ No new timescale has been announced.²⁶

Suggested questions:

Will the State Party set a timeline for implementation of section 14 of the Equality Act (2010) concerning dual discrimination?

3.4. Article 7 - Children with disabilities

The rights of children with disabilities are addressed through this report. However, we note that the UN Committee on the Rights of the Child (UNCRC) has voiced its concern that in the UK there is no comprehensive national strategy for the inclusion of disabled children and strongly support its recommendation to the UK.

Suggested question:

How does the State Party plan to respond to the recommendation of the Committee on the Rights of the Child for the UK to:

'adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities'?²⁷

²⁴ www.gov.uk/government/statistics/report-on-abortion-statistics-in-england-and-wales-for-2015

²⁵ S14 Equality Act 2010

²⁶ Equalities red tape challenge and reform of the Equality and Human Rights Commission: outcome <https://www.gov.uk/government/speeches/equalities-red-tape-challenge-and-reform-of-the-equality-and-human-rights-commission-outcome>

²⁷ Committee on the Rights of the Child Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland called upon the UK to:

3.5. Article 8 - Awareness Raising

Prejudice towards disabled people remains commonplace despite receptiveness to disability rights.^{28,29,30,31} Disabled people experience other people's attitudes as a barrier to full participation.³² Altogether, two in five (43%) people don't personally know anyone who they believe to be disabled.³³ A survey carried out by Mumsnet and Scope found that four in ten (38%) parents said that their disabled children 'rarely' or 'never' have the opportunity to socialise and mix with children who aren't disabled.³⁴

The UK government has taken some action, such as convening broadcasters to promote positive coverage of disability and following the 2012 Paralympic Games working with Channel 4 and other broadcasters.³⁵ It also supports 'Time to Change' – a major campaign to tackle mental health stigma. However, despite s149 of the Equality Act

"adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities'

(a) Ensure full respect of the rights of children with disabilities to express their views and to have their views given due weight in all decision-making that affects them, including on access to and choice of personal support and education;

(b) Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make mainstream schools fully accessible to children with disabilities;

(c) Provide children with disabilities with a comprehensive and integrated package of services for transition to adulthood, from a sufficiently early stage, by coordinating legislation, policy and programmes across relevant sectors, and ensure fully informed decisions by children with disabilities on their personal choice in the transition, by involving them in the design of services and by providing advice and information on available options.'

²⁸ Prejudice and unlawful behaviour - Exploring levers for change (2016), Abrahams, D et al Equality and Human Rights Commission

²⁹ Opinion (2013) research: 2,081 online interviews with nationally representative sample of UK adults aged 18+, conducted between 11 – 19 September 2013.

³⁰ Disabled people are thought of as less productive and as objects of care. Many people express discomfort at the idea of talking to a disabled person: Current attitudes to disabled people (2014) Scope <http://www.scope.org.uk/Scope/media/Images/Publication%20Directory/Current-attitudes-towards-disabled-people.pdf?ext=.pdf>

³¹ OPM and Ipsos MORI (2014) Removing barriers, raising living standards, Report for Scope. The research consisted of in-depth qualitative research, conducted by OPM, including 10 focus groups and 30 one-to-one interviews with disabled people with a range of impairments and/or health conditions; and quantitative survey research, conducted by Ipsos MORI, including an online survey of 1,674 disabled people and a face-to-face survey with 371 disabled people, which combined to give a representative sample of disabled people across the UK. In addition, OPM conducted ten interviews with disability experts, change experts and members of the coproduction group.

³² OPM and Ipsos MORI (2014) Removing barriers, raising living standards, Report for Scope.

³³ Current attitudes to disabled people (2014) Scope <http://www.scope.org.uk/Scope/media/Images/Publication%20Directory/Current-attitudes-towards-disabled-people.pdf?ext=.pdf>

³⁴ Scope analysis of Mumsnet / Scope survey of 550 parents of disabled children in England and Wales, conducted between 24 January – 7 February 2014.

³⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544197/1776-E_Legacy_Report_2016_ACCESSIBLE.pdf

placing duties on public bodies to have due regard to the need to tackle prejudice and promote understanding in order to ‘foster good relations between persons who share a relevant protected characteristic and persons who do not share it’³⁶ there is little evidence of this duty leading to specific action by public bodies – including the Scottish and Welsh governments - in respect of attitudes to disabled people. Full inclusion in society in itself promotes changed attitudes, but progress has been slow. Government policy and supported programmes to foster social integration do not routinely promote the integration of disabled children and adults.

Suggested question:

Can the State Party outline how it is meeting its obligations in respect of CRPD Article 8 s149 (5) of the Equality Act 2010, including via communications and action to promote social integration? Please also include specific reference to Scotland and Wales.

3.6. Article 9 – Accessibility

Barriers to access in the built environment

Access barriers to the wider built environment persist, despite measures in anti-discrimination law, building regulations, planning law and guidance.³⁷ Research, guidance and regulation has not kept pace with the lived experience of barriers by some groups including people with mental health problems, people with learning disabilities, and people with dementia or neuro-diverse conditions. Following its inquiry into the impact of the Equality Act 2010 on disabled people, the House of Lords Select Committee concluded that ‘in planning services and buildings, despite the fact that for twenty years the law has required anticipatory reasonable adjustment, the needs of disabled people still tend to be an afterthought.’³⁸

Suggested Question:

What plans do the UK, Scottish and Welsh governments have to promote and enforce accessibility law, regulations and standards?

³⁶ <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

³⁷ ODI (2011) ‘Accessibility outside the home: Key facts from the Life Opportunities Survey interim results 2009/10’; Adapt NI with BMKent Consulting found that the most common barriers disabled adults experience when accessing buildings are: stairs; doors or narrow corridors; inadequate lifts or escalators; parking problems; lack of ramps/handrails; footpath design and surfaces; difficulty with transport getting to the building; lack of help or assistance.

³⁸ The Equality Act 2010: impact on disabled people
<http://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11702.htm>

Barriers to using commonplace products

Manufactured goods remain inaccessible to many disabled people but are not yet addressed by anti-discrimination law or other accessibility regulations.³⁹

In 2015, the European Commission published its proposal for a draft Directive on accessibility requirements for products and services.⁴⁰ The UK vote to leave the European Union means that it is unclear whether the proposed Directive will apply in the UK or be emulated by the UK government.

Suggested Question:

Will the State Party adopt or echo the provisions of the proposed EU Accessibility Act in domestic legislation?

Barriers to public space

Shared space refers to a street design, becoming more commonplace in Great Britain, that integrates vehicles and pedestrians together, by removing crossings, kerbs and traffic signs.⁴¹ It poses particular dangers to disabled people, especially to people who are blind or partially sighted, by providing no delineation between pavement and road. A report 'Accidents by Design' found that 35% of participants reported that they deliberately avoided using shared space schemes, suggesting that many disabled and older people feel physically excluded from using public shared space schemes.⁴² Some disabled people feel 'aggrieved' and disregarded in the scheme's implementation, and have had 'terrifying' experiences.^{43,44} Shared spaces are actively avoided by some disabled people.⁴⁵

³⁹ As the House of Lords Select Committee Inquiry noted: 'There is powerful evidence of the serious impact of barriers to everyday living faced by disabled people as a consequence of the inaccessibility of vital products such as digital television, radio and 'white goods' because they are not often designed with the needs of disabled people in mind.'

⁴⁰ On 2 December 2015

⁴¹ Policy document: <http://www.gov.scot/resource/doc/307126/0096540.pdf>

⁴² Accidents by Design: The Holmes Report on "shared space" in the United Kingdom - Lord Holmes of Richmond MBE July 2015 <http://chrisholmes.co.uk/wp-content/uploads/2015/07/Holmes-Report-on-Shared-Space-.pdf>

⁴³ Scottish Disability Equality Forum (June 2016) Shared Space Scheme Kirkintilloch report

⁴⁴ See here for a news story detailing the problem: <http://www.bbc.co.uk/news/uk-scotland-32393984>

⁴⁵ Accidents by Design: The Holmes Report on "shared space" in the United Kingdom - Lord Holmes of Richmond MBE July 2015 <http://chrisholmes.co.uk/wp-content/uploads/2015/07/Holmes-Report-on-Shared-Space-.pdf>

Suggested Question:

How will the UK, Scottish and Welsh governments ensure compliance with obligations under the Equality Act (2010) with regard to equality between disabled and non-disabled people in planning and street design?

Inaccessible public transport

Out-dated vehicles and infrastructure in many parts of the country fail to incorporate access measures, both physical and in terms of audiovisual technology and human assistance, and new infrastructure is not always consistently accessible.⁴⁶

Legal duties for bus operators to replace all non-accessibility-compliant vehicles are poorly enforced.⁴⁷ The law on priority use of space for wheelchair users remains unclear in law and guidelines.⁴⁸

Many train stations in England, Scotland and Wales do not have accessible entrances and staff.⁴⁹ Where accessibility provision is available it must be booked in advance, which means disabled people cannot make spontaneous journeys. In Scotland, train companies do not comply with their “commitment to providing, wherever possible, clear and consistent audio and visual information” on trains and at stations.^{50 51} 40% of Scotland’s local authorities also do not enforce accessibility requirements for taxis.⁵²

Suggested Questions:

What further steps will the State Party take to ensure that new public transport vehicles, infrastructure, audio-visual information, signage and staff support provide an accessible travel experience?

⁴⁶ For example, original plans for Crossrail did not include step-free access at all stations along the route. See 276 House of Lords Committee report on the impact of the Equality Act on disabled people http://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11710.htm#_idTextAnchor117

⁴⁷ EHRC evidence in support of Bus Services Bill 2016

⁴⁸ A recent case involving a wheelchair user who was unable to board a bus because the space was occupied by a mother with a baby in a pushchair was heard in the Supreme Court. Although the Court upheld the right of the disabled man to occupy the space it stopped short of giving wheelchair users an absolute right <http://www.supremecourt.uk/cases/uksc-2015-0025.html>

⁴⁹ See para 276-278 The Impact of the Equality Act 2010 on disabled people (2016) House of Lords Select Committee Inquiry https://www.scotrail.co.uk/sites/default/files/assets/download_ct/disabled_peoples_protection_policy_-_helping_older_and_disabled_passengers_-_october_2016_1mb.pdf

⁵⁰ This is UK Government policy - <http://orr.gov.uk/info-for-passengers/passengers-with-disabilities>

⁵¹ Evidence from disabled people during consultations and events has consistently made this point.

⁵² Capability Scotland (2012): Left behind: Taxi licensing rules leave disabled Scots stranded, http://www.capability-scotland.org.uk/media/201894/equality_act_taxis_final211112.pdf

Can the State Party outline plans in Wales to develop and implement an Accessible Transport Framework and Action Plan, as in Scotland and England?

3.7. Article 10 - Right to Life

High numbers of unexpected deaths

There has been a rise in the number of unexpected deaths of mental health in-patients or those cared for at home in England during 2014-15.⁵³ The number of actual or attempted suicides has also risen.⁵⁴ However, there is no system of independent investigation mechanisms following such deaths.

Deaths in police, prison or immigration detention - or following contact with state agents – require a coroner’s inquest based on an independent investigation by the Independent Police Complaints Commission (IPCC) or the Prisons and Probation Ombudsman (PPO). However, there is no equivalent mechanism to scrutinise deaths in mental health settings or in care settings for people with learning disabilities. Instead, the inquest is reliant pre-inquest on internal reviews and investigations conducted by the same trust responsible for the patient’s care. Since 2011, hospitals in England have investigated just 222 out of 1,638 deaths of patients with learning disabilities. Among deaths they classed as unexpected, hospitals inquired into just over a third.⁵⁵ The Care Quality Commission for England has expressed concern about the efficacy of the system.⁵⁶

Scottish Government rejected calls for mandatory independent investigations of deaths in mental health detention and excluded provision from the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.⁵⁷ However, s37 of Mental Health (Scotland) Act

⁵³ An increase of 21% from 2012-13. Figures for the first six months of 2015-16 show a continued upward trend, with 1,132 serious incidents recorded as involving an unexpected or potentially avoidable death. Figures provided by NHS England in response to a Freedom of Information request by Norman Lamb MP

⁵⁴ By 26% from 595 in 2012-13 to 751 in 2014-15. – Figures provided by NHS England in response to a Freedom of Information request by Norman Lamb MP

⁵⁵ Revealed: NHS hospitals investigate one in seven deaths of vulnerable patients, 26 April 2016, Guardian Newspaper <https://www.theguardian.com/society/2015/dec/20/revealed-nhs-hospitals-investigate-1-in-7-deaths-of-vulnerable-patients>

⁵⁶ “We are particularly concerned that providers are failing to notify us of the death of a detained patient in the expected timescales in nearly half (45%) of all cases... We are concerned by the lack of an independent system for investigating the deaths of detained patients in healthcare settings, and believe there is much greater opportunity for learning to take place when deaths occur, and for improvements to be put in place.” Monitoring the Mental Health Act 2015 (2014/15) Care Quality Commission https://www.cqc.org.uk/sites/default/files/20151207_mhareport2014-15_full.pdf

See: The Scottish Human Rights Commission - Written evidence to the Justice Committee Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill April 2015

2015 requires a review of arrangements to investigate deaths of detained patients to be carried out within 3 years.

Suggested question:

What measures will the State Party take to ensure effective, timely and independent investigations following the unexpected deaths of disabled people in the care of the State?

Social security administration may have exacerbated mental ill-health and increased suicide risk

We are concerned by evidence that suggests that the administration of social security benefits may have been an attributing factor in the decision of some people with mental health problems to take their own lives.^{58,59,60} We address this issue in more detail under Article 25 - right to health, but consider that it may raise issues concerning the States obligation to protect people's right to life.

3.8. Article 12 - Equal Recognition before the law

Laws concerning legal capacity fail to comply with the CRPD

The Mental Capacity Act 2005 (MCA) and the Adults with Incapacity (Scotland) Act (2000) (AWIA) are not compliant with the CRPD. The MCA, which covers England and Wales permits legal capacity to be denied on the dual basis of mental incapacity and disability.⁶¹ The AWIA employs a test of mental capacity for the restriction of legal capacity, which includes a requirement that incapacity is ‘by reason of mental disorder.’⁶²

The MCA also relies on a ‘best interests’ standard that fails to comply with the safeguards required by CRPD Article 12.4.⁶³ Although the AWIA

⁵⁸ See Calum’s list compiled by Dr Stephen Carty, a GP in Leith, Edinburgh: <http://calumslit.org/>

⁵⁹ SAMH (2014) Worried Sick: Experiences of Poverty and Mental Health across Scotland: https://www.samh.org.uk/media/432022/samh_worried_sick_poverty_and_mental_health.pdf

⁶⁰ See this case report: http://www.mwcscot.org.uk/media/180939/who_benefits_final.pdf

⁶¹ In the MCA an inability to make a decision is referred to as ‘mental incapacity’ and is defined functionally, as the inability to understand, retain, use or weigh, and communicate the information relevant to the decision.⁶¹ S2(1) MCA stipulates that:

“For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter *because of an impairment of, or a disturbance in the functioning of, the mind or brain*”

⁶² s1(6) Adults with Incapacity Act (Scotland) 2000

⁶³ As the Essex Autonomy Project has identified the best interests standard in S4 of the MCA requires only that: “the wishes and feelings, beliefs and values of a person be *considered*, not that they be *given priority* in any decisions taken in the best interests of the person” However, the Law Commission has proposed a presumption that best interests decisions that would follow the wishes of the individual unless there are good reasons not to do so in its report *Mental capacity and deprivation of liberty: A consultation paper*, (Consultation Paper 222) London.

requires substitute decisions to be based on 'benefit' to the person, rather than 'best interests', analysis shows that these approaches differ little in practice.⁶⁴

The support model under the MCA is support for *mental* not *legal* capacity; accordingly support is not construed as helping a person to exercise legal capacity in accordance with their will and preferences, but to attain the standard of mental capacity to be *permitted* to exercise legal capacity. Neither is support necessarily based on a person's will and preferences,⁶⁵ and there is at present no mechanism under the MCA to enable a person to nominate a legally recognized supporter⁶⁶ – although the Law Commission has recently proposed that such a mechanism should be created.⁶⁷ Thus the resulting support available is limited, fragmented and not in accordance with the spirit of the CRPD. The AWIA also contains very few provisions requiring support be made available to assist the person in making decisions or in exercising their legal capacity.⁶⁸

In addition to the discriminatory grounds on which legal capacity can be denied, official evidence suggests that the processes by which capacity is determined fail to meet existing legal requirements.⁶⁹ In Scotland there was a rise of 99% in the number of new welfare guardianship orders granted between 2009/10 and 2015/16.⁷⁰

Ruck Keene, A. and Ward, A. (2016) 'With and without 'best interests': The Mental Capacity Act 2005, the Adults with Incapacity (Scotland) Act 2000 and constructing decisions', *International Journal of Mental Health and Capacity Law*, 1(1)

⁶⁵ Series, L. (2015) 'Relationships, autonomy and legal capacity: Mental capacity and support paradigms', *International Journal of Law and Psychiatry*, 40, 80-91.

⁶⁶ Individuals who are deemed to have the mental capacity to do so may make a Lasting Power of Attorney, but their role goes beyond that of a supporter to acting in the individual's best interests. This is not available to individuals considered to lack the mental capacity to make a Lasting Power of Attorney.

⁶⁷ Law Commission (2015) *Mental capacity and deprivation of liberty: A consultation paper*, (Consultation Paper 222) London.

⁶⁸ Martin, W., Michalowski, S., Stavert, J., Ward, A., Ruck Keene, A., Caughey, C., Hempsey, A. and McGregor, R. (2016) *The Essex Autonomy Project Three Jurisdictions Report: Towards Compliance with CRPD Art. 12 in Capacity/Incapacity Legislation across the UK*, University of Essex; Stavert, J. (2015) 'The Exercise of Legal Capacity, Supported Decision-Making and Scotland's Mental Health and Incapacity Legislation: Working with CRPD Challenges', *Laws*, 4, 296–313

⁶⁹ See: House of Lords Select Committee on the Mental Capacity Act 2005 (2014) *Mental Capacity Act 2005: post-legislative scrutiny*, (Report of Session 2013–14) TSO: London

Adults with Incapacity Act Monitoring Report 2015-16:

www.mwscot.org.uk/media/342863/2016_awi_report_v3_07.09.2016_final_jw_27.09.16.pdf;
<http://www.mwscot.org.uk/about-us/latest-news/human-rights-concern-over-rising-levels-of-compulsory-mental-health-treatment/>

Suggested question:

What steps is the State Party taking to ensure compliance with the CRPD of the law concerning legal capacity in England and Wales and in Scotland?

3.9. Article 13 - Access to justice

Cuts to legal aid and legal advice

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 removed numerous areas of law from the scope of civil legal aid, including employment cases (with the exception of discrimination) and most housing, debt and social security benefit cases. Disabled people relied more on legal aid services and are likely to be disproportionately affected by the reforms.⁷¹

State support for local and national not-for-profit advice agencies relied on by many disabled people when seeking advice about their rights or help to challenge decisions have also faced significant cuts.⁷² There is no accessible specialist advice on legal rights for disabled people in Scotland or Wales and a lack of pro-bono lawyers with disability expertise.⁷³

There is a lack of faith around access to justice for disabled people, and this results in under-reporting.⁷⁴

Suggested question:

Can the state party outline the impact of legal aid cuts to disabled people; and detail its plans to increase disabled people's access to legal redress, including legal advice in Scotland and Wales?

Redress against discrimination in employment

The UK government introduced fees for bringing claims in employment tribunals by the Employment Tribunals and Employment Appeal Tribunal Fees Order 2013 which came into force on 29 July 2013.⁷⁵ The introduction of fees has proven a major barrier to securing remedy in

⁷¹ House of Commons Justice Committee (2011) Inquiry Report on 'Government's proposed reform of legal aid: Third Report of Session 2010-11' Vol 1, p32.

⁷² The Low Commission (January 2014) found that: 'reductions in local authority funding of advice and legal support (are) estimated to be at least £40m by 2015'; Shelter has had to close nine of its advice centres as a result of a £3m cut in its legal aid funding ;ASA have had their grant from the (then) LSC cut, reducing their ability to perform a co-ordinating and representative role
www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf

⁷³ By comparison, in England, where there are 11 specialist disability law centres.

⁷⁴ EHRC (2011) Hidden in Plain Sight

⁷⁵ The Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (SI 2013/1893)

relation to employment discrimination. Since their introduction in July 2013, disability discrimination claims have fallen by 54% The Scottish Government announced in September 2015 that it would abolish such fees in Scotland.⁷⁶ The UK government is presently reviewing the policy.

Suggested question:

How does the State Party intend to ensure that disabled people who experience employment discrimination can access affordable and effective modes of redress?

3.10. Article 14 - Liberty and security of the person

The Mental Health Act 1983 and Mental Capacity Act 2005 (covering England and Wales) and the Mental Health (Care and Treatment) (Scotland) Act 2013 and Adults with Incapacity Act (Scotland) Act 2000 are not compliant with the UNCRPD. The Law Commission for England and Wales has noted advice by the UN High Commissioner on Human Rights that to comply with the CRPD, legal grounds for detention must be “de-linked from the disability and neutrally defined so as to apply to all persons on an equal basis” and has concluded that:

‘it is difficult to see that the Mental Capacity Act (or indeed all mental health and capacity law in the United Kingdom) is remotely compliant (with the CRPD).’^{77,78}

However, it is also very difficult to see how any signatory to the European Convention on Human Rights could implement disability neutral detention legislation relating to risk, dangerousness, incapacity

⁷⁶ See House of Commons Library, [Employment Tribunal Fees](#), 22 June 2016. See also Chapter 12, *The Implications and Consequences of UK Exit from the EU: Social Policies*, Aileen McColgan, ‘Britain Alone!’, P Birkenshaw & A Biondi (Eds), 2016, pages 215 – 220.

⁷⁷ Mental Capacity and Deprivation of Liberty Consultation (2015) Law Commission http://www.lawcom.gov.uk/wp-content/uploads/2015/07/cp222_mental_capacity.pdf

⁷⁸ The Mental Capacity Act 2005 is non-compliant for the reasons outlined in relation to Article 12. The Mental Health Act 1983 is non-compliant, principally because it permits compulsory detention and compulsory treatment on grounds that include disability (‘mental disorder’). People with ‘mental disorders’ are exceptional amongst citizens in that they can be compulsorily detained on the basis of a perception that they may be a risk to themselves or others in the future; and in that they can be compulsorily treated even when they are entirely capable of taking decisions themselves. There is no actuarial basis for decisions on risk of future harm and no option to challenge in legally the way risk is applied to the individual. Legislation permitting compulsory treatment became more draconian with the passage in 2008 of a law introducing Supervised Community Treatment Orders (CTOs).

or other grounds because it is necessary to comply with one of the limited categories of Article 5(1) permitting detention.^{79,80}

The number of uses of compulsory detention and treatment under the Mental Health Act 1983 (covering England and Wales) and Mental Health (Care and Treatment) (Scotland) Act 2003 has increased significantly, particularly over the last decade.^{81,82} In England, there have been 10% rises per year for the last 2 years. The 2015 Learning Disability census showed that 83% of inpatients with learning disabilities in England were subject to detention under the Mental Health Act.⁸³

In addition, Community Treatment Orders (CTOs) were used 4564 times in England in 2014-15.⁸⁴ When CTOs were introduced in 2008 by the last Labour Government, the intention was that they would be used 400-600 times per year, with a corresponding reduction in compulsory detentions in hospital. The reality has been starkly different: CTO rates about 10 times the rates predicted, and compulsory detentions in

⁷⁹ See: Bartlett, P. (2012) 'A mental disorder of a kind or degree warranting confinement: examining justifications for psychiatric detention', *The International Journal of Human Rights*, 16(6), 831-844; Fennell, P. and Khaliq, U. (2011) 'Conflicting or complementary obligations? The UN Disability Rights Convention, the European Convention on Human Rights and English law', *European Human Rights Law Review*, (6), 662-674.]

⁸⁰ The UK Government has asked the Law Commission to undertake a review of the Deprivation of Liberty Safeguards. The Commission has consulted on proposals and is expected to bring forward draft legislation in December 2016. However, while striving to articulate proposals in support of the aim and principles of the CRPD, the Commission has said that it will not attempt to address fundamental features of the law that cause it to be in non-compliance with the CRPD:

'All appropriate efforts have been made to give effect to the will and preference of the person, and in places we have provisionally proposed amendments to the Mental Capacity Act in order to achieve this. However, aspirations such as the complete removal of substituted decision-making and of differentiation in law attributable to mental disability would require a greater process of change over a much longer timescale. They would also require policy decisions and resources from Government. These are matters beyond our powers. In the meantime, our new scheme aims to support the principles of the UN Disability Convention, whilst creating an appropriate balance with the existing regime of the Mental Capacity Act and ensuring compatibility with the European Convention on Human Rights.'

⁸¹ In England, powers of compulsory detention were used 21,897 times in 1987-8; 44,093 in 2007-8; and 58,399 in 2014-15. A 10% rise between 2013-14 and 2014-15 was the fastest on record Health and Social Care Information Centre <http://content.digital.nhs.uk/catalogue/PUB18803/inp-det-m-h-a-1983-sup-com-eng-14-15-rep.pdf>

⁸² In Scotland, the Mental Welfare Commission reports in the Mental Health Act Monitoring Report 2015-16 that 'This year, we saw a rise of just over 3% in new episodes of compulsory treatment. This is now at the highest level since the Mental Health Act was implemented in 2005, and above the level under the previous mental health act.'
http://www.mwscot.org.uk/media/342871/mha_monitoring_report_to_omg_on_2_aug_2016_-_final_ab_19_sept_16_jw_26.09.pdf

⁸³ The Learning Disability Census considers inpatients in specialist units with learning disabilities, autistic spectrum disorder and/or behaviour that challenges. It provides detailed information about these patients and their experiences of care in NHS and independent facilities in England. The Census began in 2013 in response to events at Winterbourne View Hospital.

⁸⁴ Health and Social Care Information Centre <http://content.digital.nhs.uk/catalogue/PUB18803/inp-det-m-h-a-1983-sup-com-eng-14-15-rep.pdf>

hospitals continuing to rise. Similarly, in Scotland 2015-16 saw the highest number of new civil Compulsory Treatment Orders since the Mental Health (Care and Treatment) (Scotland) Act 2003 was implemented, having followed an upward trend since 2009/10.⁸⁵ Three randomised controlled trials have shown no patient benefits of CTOs.⁸⁶ Despite this there has been no review.

Compulsory admission rates for people of black ethnicity are almost three times greater than those of white patients.⁸⁷

During 2015-16 local authorities in England received 195,840 applications to authorise a deprivation of liberty and there were 206,010 individuals who were the subject of at least one active Deprivation of Liberty Safeguards application under the Mental Capacity Act 2005. Over half of these related to people with dementia, and a significant minority to adults with learning disabilities.⁸⁸

Scotland at present provides no legal framework for the detention of incapacitated adults in hospitals and care services; they are likely to be regarded as unlawfully *de facto* detained in accordance with domestic case law.⁸⁹ A consultation and proposals for a framework for authorising detention in these settings made no reference to the requirements of Article 14 CRPD.⁹⁰

Suggested questions:

Will the State Party outline the steps it is taking to ensure compliance with the Convention in respect to matters of detention, deprivation of liberty and compulsory treatment?

⁸⁵ Mental Health Act Monitoring Report 2015-16 Mental Welfare Commission

⁸⁶ They state: “*The evidence is now strong that the use of CTOs does not confer patient benefits despite substantial curtailment of individual freedoms ... and their current high usage should be urgently reviewed.*” (Burns et al, 2013).

⁸⁷ Monitoring the Mental Health Act 2014/15 Care Quality Commission
http://www.cqc.org.uk/sites/default/files/20151207_mhareport2014-15_full.pdf

⁸⁸ Health and Social Care Information Centre <http://content.digital.nhs.uk/catalogue/PUB18803/inp-det-m-h-a-1983-sup-com-eng-14-15-rep.pdf>

⁸⁹ *P v Cheshire West and Chester Council and another; P and Q v Surrey County Council* [2014] UKSC 19

Scottish Law Commission (2014) *Report on Adults with Incapacity* (Scot Law Com No 240) Edinburgh

3.11. Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

Use of restraint and seclusion

The use of restraint and seclusion in mental health and learning disability care is commonplace.⁹¹ In June 2016, the Committee on the Rights of the Child expressed concern at the use of restraint and seclusion on children with psychosocial disabilities including autism in schools in the UK.⁹²

There are examples of health services in Great Britain that aim to be free of restraint and seclusion – for instance, in Nottingham every use of seclusion is viewed as a clinical failure. However, while the Department for Health has produced advice and NHS Scotland and Health Improvement Scotland have programmes to improve safety in psychiatric care,⁹³ the UK has no national commitment to move towards a restraint and seclusion-free service, unlike some countries such as the USA.

Inappropriate use of anti-psychotic drugs and other medication

Evidence demonstrates that anti-psychotic and anti-depressant drugs are being routinely and inappropriately prescribed to persons with learning disabilities in the UK.^{94,95} In June 2016, the government, NHS

⁹¹ There were 9600 uses of restraint during August 2015 in mental health wards in England, of which 16.5 per cent (1591) were prone restraint (NHS Benchmarking data August 2015). The Learning Disability Census 2015 found that one third of patients with a learning disability were subject to the use of restraint in 2015-16, a figure largely unchanged since 2013-15. 13% were subject to seclusion, an increase from 11% in 2013 and 2014 (The Learning Disability Census 2015)

Note: the Census has not continued from 2015, and statistics on restraint and seclusion in inpatient services will no longer be collected. From 2016, data on the use of restraint and other restrictive interventions will be included in the Health and Social Care Information Centre (HSCIC)'s Mental Health and Learning Disability Minimum Dataset.

⁹² Committee on the Rights of the Child Concluding Observations concerning the United Kingdom June 2016

⁹³ Positive and Proactive Care: reducing the need for restrictive interventions', (2014) Department for Health <https://www.gov.uk/government/publications/positive-and-proactive-care-reducing-restrictive-interventions>

⁹⁴ A major study in 2015 found that 'The proportion of people with intellectual disability who have been treated with psychotropic drugs far exceeds the proportion with recorded mental illness. Antipsychotics are often prescribed to people without recorded severe mental illness but who have a record of challenging behaviour. The findings suggest that changes are needed in the prescribing of psychotropics for people with intellectual disability. More evidence is needed of the efficacy and safety of psychotropic drugs in this group, particularly when they are used for challenging behaviour.' Mental illness, challenging behaviour, and psychotropic drug prescribing in people with intellectual disability: UK population based cohort study (Published 01 September 2015) BMJ 2015;351:h4326 <http://www.bmj.com/content/351/bmj.h4326>

⁹⁵ 72 per cent of inpatients with a learning disability (2,155) received antipsychotic medication either regularly or 'as and when needed' in the 28 days prior to the Learning Disability Census collection in 2015, compared to 73 per cent (2,345) in 2014 The Learning Disability Census 2015

England, several professional bodies and the Challenging Behaviour Foundation published a shared pledge to tackle the over-prescribing of anti-psychotic drugs to people with learning disabilities and/or autism.⁹⁶ There is growing concern about the inappropriate use of antipsychotic drugs for dementia patients living in residential or nursing care homes.⁹⁷

Suggestion question:

What measures has the State Party adopted to reduce or eliminate the use of restraint, seclusion and inappropriately prescribed medication to disabled people?

Immigration detention

Significant numbers of those detained under immigration rules in England and Wales experience acute mental health problems, related both to their past life and to their conditions of detention.⁹⁸ Moreover, their situation and treatment may often amount to a grave and systemic violation of the right to freedom from torture, inhuman and degrading treatment.⁹⁹ An independent review into the welfare of ‘vulnerable persons’ in detention published in January 2016 suggested that grave violations were systemic.¹⁰⁰

Stakeholders told us that the Home Office has deliberately fostered a ‘culture of disbelief’ in order to deter asylum seekers, which means that torture survivors with mental or physical impairments are routinely detained. There has also been a deliberate policy intention to create a ‘hostile environment’ for people presumed to be illegal immigrants, to encourage them to leave voluntarily.¹⁰¹ This can mean destitution and

⁹⁶ Over-medication pledge <https://www.england.nhs.uk/2016/06/over-medication-pledge/>

⁹⁷ Szczepura A, Wild D, Khan AJ, et al. Antipsychotic prescribing in care homes before and after launch of a national dementia strategy: an observational study in English institutions over a 4-year period. *BMJ Open* 2016

⁹⁸ Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

⁹⁹ There have been six recent cases involving people in immigration detention where the British courts had found the Home Office to be in breach of Article 3 of the European Convention on Human Rights, all involving persons with mental health problems. For details see Appendix 4 Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw 2016 Home Office https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf

¹⁰⁰ “There are many other cases in which the court has not found a breach of Article 3 but where it found that detention was unlawful. In other words, the lack of other findings of Article 3 breaches in other cases is “very far from an indication that the five cases ... are outliers in terms of the substantive factual criticisms of the treatment of vulnerable detainees.” Review into the Welfare in Detention of Vulnerable Persons A report to the Home Office by Stephen Shaw 2016 Home Office

¹⁰¹ see: <http://www.cityam.com/245394/theresa-mays-hostile-environment-become-our-hostile-nation>

homelessness and/or indefinite detention in asylum removal centres without judicial oversight.

Suggested question:

How is the State Party amending its policy and practice concerning immigration detention to comply with human rights law and standards?

Disabled prisoners

The Prisons and Probation Ombudsman for England and Wales has identified the failure of prisons to make reasonable adjustments (accommodation) for disabled prisoners as a significant problem.¹⁰² This failure can give rise to inhuman and degrading treatment.¹⁰³ In Scotland, the proportion of prisoners with mental health conditions is four times higher than in the general population; and there are approximately 1,000 prisoners with a learning disability.¹⁰⁴ While learning disabled prisoners are 'more likely to be placed in segregation, bullied, and subject to control and restraint procedures ... only 3 of 17 Scottish prisons have a specialist learning disability service'.¹⁰⁵

Suggested question:

What measures has the State Party adopted to ensure that disabled prisoners are not denied reasonable accommodation or subject to inhuman and degrading treatment?

3.12. Article 16 - Freedom from exploitation, violence and abuse

High incidence and low reporting of disability hate crime

There were an estimated 56,000 incidents of disability hate crime in England and Wales each year between 2010-14.¹⁰⁶ While levels of reporting and recording of disability hate crime by the police, and the number of convictions have been increasing, 93% of incidents in

¹⁰² See Prisons and Probation Ombudsman for England and Wales Annual Report 2011-12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236024/8429.pdf

¹⁰³ As was noted in Price v United Kingdom (2001): 'to detain a severely disabled person in conditions where [s]he is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constitutes degrading treatment contrary to Article 3.'

¹⁰⁴ ARC Scotland (2012) Supporting Offenders with Learning Disabilities in Scotland

¹⁰⁵ ARC Scotland (2014) Powerpoint: Learning Disabled Offenders

¹⁰⁶ Coleman, Nick & Sykes, Wendy Research report 103: Crime and disabled people - Measures of disability-related harassment 2016 Update (2016) Equality and Human Rights Commission <https://www.equalityhumanrights.com/en/publication-download/research-report-103-crime-and-disabled-people>

England and Wales continue to go unrecorded.^{107,108} Similarly, while there were 201 charges of disability hate crime in Scotland between 2015-16 (a 14% rise on 2014-15)^{109,110} Scotland's Lord Advocate has said that disability hate crime in Scotland is "significantly under-reported."¹¹¹

Scottish Government and Police Scotland raised awareness about hate crime, established third party reporting centres and widened hate crime law with the Offences (Aggravation by Prejudice) (Scotland) Act in 2010.¹¹² However, confidence in reporting remains low.¹¹³

Suggested question:

What steps has the State Party adopted to prevent disability hate crime and encourage reporting, recording and prosecution?

Insufficient access to domestic violence services

Research indicates a higher incidence of domestic violence amongst disabled women compared with non-disabled women, but disabled women find support services inaccessible.^{114,115}

Cuts in national budgets have reduced 'provision of local services and ... specialised expertise'.¹¹⁶ Public health guidance recommends more

¹⁰⁷ There were 3652 disability hate crimes recorded by the police in England and Wales in 2015/16 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559319/hate-crime-1516-hosb1116.pdf

¹⁰⁸ Source:

https://www.cps.gov.uk/news/latest_news/more_hate_crimes_prosecuted_by_the_crown_prosecution_service_than_ever_before/

¹⁰⁹ Coleman, Nick & Sykes, Wendy Research report 103: Crime and disabled people - Measures of disability-related harassment 2016 Update (2016) Equality and Human Rights Commission <https://www.equalityhumanrights.com/en/publication-download/research-report-103-crime-and-disabled-people>

¹¹⁰ <http://www.crownoffice.gov.uk/media-site/media-releases/1329-hate-crime-in-scotland-2015-16>

¹¹¹

http://www.eveningtimes.co.uk/news/14793451.Hate_crime_against_people_with_disabilities_under_reported_says_Lord_Advocate/?ref=arc

¹¹² See here for info about awareness raising and third party reporting centres:

<http://www.hatecrimescotland.org/home/hate-crime-week-2016/>

For example, see:

<https://www.cumbria.gov.uk/eLibrary/Content/Internet/327/877/1078/41556154948.pdf> and http://local.gov.uk/documents/10180/7878727/community+safety+-+community+cohesion+and+hate+crime+-+Final+Hate+Crime+2016+strategy+doc_WEB/b96bb203-76ae-4501-9192-6e2ef7e37785

¹¹⁴ Women's Aid (2007) Disabled women and domestic violence: Making the links

¹¹⁵ This figure could be even higher – it was 75% in a recent survey with disabled women in Glasgow: <http://www.zerotolerance.org.uk/resources/violence-against-disabled-women-survey?destination=node%2F340%3Fpage%3D1%26type%3D28%26subject%3D30&vaw=1>

¹¹⁶ Walby, S et al (2012) 'Measuring the impact of cuts in public expenditure on the provision of services to prevent violence against women and girls', Northern Rock Foundation and Trust for London.

assistance for disabled women to access violence and abuse service, which can be inaccessible.¹¹⁷ Despite the introduction of the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 there is inconsistent provision of accessible domestic abuse support services is available in relation to Wales.¹¹⁸

Suggested question:

What is the State Party doing to ensure that disabled women can access violence and abuse services, including specialist services?

The Human Rights Act fails to protect some disabled people when receiving care and support

Section 73 of the Care Act 2014 extended the Human Rights Act 1998 (HRA) to explicitly cover all those receiving care funded or arranged by a local authority. However, while welcome, this was only a partial closure of the protection gap that continues to leave those whose care is funded by another public body, such as the National Health Service or who are paying and arranging for their own care, outside the scope of the HRA.¹¹⁹

Suggested question:

Will the State Party legislate to close the gap in human rights protection for those receiving care and support from public bodies other than local authorities?

3.13. Article 18 - Liberty of movement and nationality

On ratifying the CRPD in 2009, the UK government entered a reservation regarding Article 18, arguing that it was necessary to clarify that the Convention did not create new or additional rights for disabled people to enter or remain in the United Kingdom.

Following the Home Office review of the reservation in 2010, the Minister announced the reservation was necessary ‘to retain the right to apply immigration rules, to avoid creating an unnecessary new avenue to challenge immigration decisions due to the optional protocol, and to

¹¹⁷ NICE (2014) Public health guidance 50 ‘Domestic violence and abuse: how health services, social care and the organisations they work with can respond effectively’.

¹¹⁸ Welsh Women’s Aid, Disability Wales, University of South Wales
www.disabilitywales.org/projects/domestic-abuseof-disabled-women-in-wales/

¹¹⁹ The Care Act 2014 closed a loophole in the Human Rights Act relating the definition of ‘public authority’ which had meant that private providers of care – whether in care homes or a person’s own home – were not subject to the Act even when the person’s care was funded by a local authority. Given the vast majority of care is provided by non-State actors, this had been a major gap in protection. However, this change did not address situations where a person’s care is funded under ‘Continuing Health Care’ by the National Health Service.

preserve the right to safeguard the public purse from excessive demands which may be placed on it’.

Suggested question:

Can the State Party explain the rationale for its reservation to Article 18, and how the generality of this renders it compatible with the object and purpose of the Convention?

3.14. Article 19 - Living independently and being included in the community

We note and support the findings and recommendations of the CRPD Committee’s Inquiry concerning the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 07 November 2016.

Policy, practice and law fails to protect Article 19 rights.

There have been a number of positive innovations in law concerning care and support since the CRPD was ratified by the UK in 2009, including the Care Act 2014,¹²⁰ the Social Services and Well-being (Wales) Act 2014,¹²¹ and the Social Care (Self Directed Support) (Scotland) Act 2013.¹²² Each alludes to disabled people’s right to live independently and to be included in the community but do not provide a statutory right. This absence means that provision of support services and the opportunity for disabled people to exercise choice and control remains vulnerable to retrogression, is unmonitored and unenforceable.

With respect to the obligation to *progressively realise* the economic and social elements of Article 19, there has been a sharp decline in both spending on and the availability of adult social care in England and Wales.^{123,124,125} This has impacted on the overall quantum of care and the degree to which disabled people are able to exercise choice and control.¹²⁶ We have heard personal testimony from people living with

¹²⁰ Care Act 2014 <http://www.legislation.gov.uk/ukpga/2014/23/enacted>

¹²¹ Social Services (Wellbeing) Act 2014
http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

¹²² See <http://www.legislation.gov.uk/asp/2013/1/contents/enacted>

¹²³ In England, at least 400,000 fewer people are receiving care and support than in 2009 (29% fewer) against a trend of rising demand from England’s ageing population NHS Digital, Community Care Statistics, 2013/14. Accessed at digital.nhs.uk

¹²⁴ In Wales, 5000 fewer people are now receiving care and support compared to 2011 Data from Stats Wales. Accessed at stats.wales.gov.wales

¹²⁵ In Scotland, 1 in 7 people receiving social support lost this between 2009 and 2014. See Learning Disability Alliance (2014) report:
<http://www.ldascotland.org/docs/2014%20Eligibility%20Criteria%20Report%20final.pdf>

¹²⁶ A third of respondents (33%) to a 2016 survey by In Control said that the level of choice and control they enjoyed over their support had reduced or reduced significantly over the past year
<http://www.in-control.org.uk/news/in-control-news/report-on-the-independent-living-survey-2016.aspx>

people they do not choose to live with and being forced to move home when their support needs change.

In its 2012 inquiry report on the right of disabled people to independent living the Joint Parliamentary Committee on Human Rights recommended:

‘that all interested parties, governmental and non-governmental, immediately start work on assessing the need for and feasibility of free-standing legislation to give more concrete effect in UK law to the right to independent living’

Further, there is no local level accountability for implementing the National Framework for Action on Independent Living in Wales. And in Scotland the Health and Social Care Integration (HSCI) agenda focuses on ‘health’ at the expense of ‘social care’, while excluding disabled people from planning.

Suggested question:

Will the State Party act on the recommendation of the Joint Parliamentary Committee for Human Rights and conduct an assessment of the need for freestanding legislation to give concrete effect in UK law to the right to live independently and to be included in the community?

Self-Directed-Support is significantly under-resourced

There has been a sharp decline in spending - and provision - of Self-Directed-Support adult social care across the UK.^{127,128,129} One third of social care recipients in Scotland have not received full information about social care options.¹³⁰ And disabled people report being unable to choose who to live with, or having to move home to meet support needs.

Strategy and coordination is inconsistent and weak

The Independent Living Strategy (ILS) was a cross-government project, coordinated by the Office for Disability Issues. It was published in 2008 and aimed to fill the gap "between national policy and people's real experiences." The second annual report by the Independent Living

¹²⁷ In England, at least 400,000 fewer people are receiving care and support than in 2009 (29% fewer) against a trend of rising demand from England's ageing population NHS Digital, Community Care Statistics, 2013/14. Accessed at <http://digital.nhs.uk>

¹²⁸ In Wales, 5000 fewer people are now receiving care and support compared to 2011 Data from Stats Wales. Accessed at <http://statswales.gov.wales>

¹²⁹ In Scotland, 1 in 7 people receiving social support lost this between 2009 and 2014. See Learning Disability Alliance (2014) report: <http://www.ldascotland.org/docs/2014%20Eligibility%20Criteria%20Report%20final.pdf>

¹³⁰ An indicative budget is the amount it is predicted a person will need to purchase the social care they require.

Scrutiny Group, published in February 2011, says "As we move to the midway point of the five-year strategy, we would expect to be seeing indications of the positive impact of the action plan. Unfortunately, this has not really been the case". It noted that direct payments and personal budgets for adult social care had increased choice and control for disabled people receiving them, and advocated the continuing development of personalisation. However, it raised concerns about the impact of funding cuts and social security reform, and the continuing barriers disabled people face in accessing housing, transport and employment. The strategy was not renewed at the end of the five year period in 2013 and nothing purely on independent living has taken its place. While the UK Government Fulfilling Potential strategy has outcome indicators, including areas such as increased choice and control¹³¹ and in 2013 Government committed to publishing progress against them, there is nonetheless no co-ordinated action across Government to achieve the right to live independently and to be included in the community in England.

The Welsh Government is presently reviewing the 'Framework for Action on Independent Living' which was published in 2013 and which explicitly aims to fulfil obligations arising from the UNCRPD.¹³² While the framework has been welcomed by disabled people and their organisations, it is felt that implementation is frustrated by a lack of accountability for ensuring actions are achieved by public bodies operating at the local level.

Suggested question:

Can the State Party outline the steps it is taking to coordinate and monitor policy and action by national and local government and other bodies to advance the right to live independently and to be included in the community?

3.15. Article 20 - Personal mobility

Access to adapted motor vehicles

Many disabled people are losing access to their sole means of transport via the Motability scheme¹³³ as a consequence of the introduction of the

¹³¹ see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320745/making-it-happen.pdf

¹³² Framework for Action on Independent Living (2013) Welsh Government

<http://gov.wales/topics/people-and-communities/equality-diversity/rightsequality/disability/framework-for-action/?lang=en>

¹³³ See: <http://www.motability.co.uk>

Personal Independence Payment.¹³⁴¹³⁵ 400-500 Motability vehicles per week are being returned.¹³⁶ This leads to significant social isolation, particularly in rural areas.¹³⁷ ¹³⁸

Suggested question:

How does the State Party intend to mitigate the negative impact on personal mobility and independent living for those who have lost entitlement to a Motability vehicle following assessment for Personal Independence Payment?

Assessing fitness to drive

In 2016 the Parliamentary and Health Service Ombudsman found that the Driver and Vehicle Licensing Authority has left people living with health conditions/impairments including dementia 'in limbo for years as a result of major failings by the Driver and Vehicle Licensing Agency (DVLA) in assessing people's fitness to drive, leaving them unable to work and cutting them off from their friends and families.'¹³⁹

Suggested question:

What steps is the State Party taking to improve the efficiency and effectiveness of the DVLA in respect of assessing people's fitness to drive?

¹³⁴ Declan O'Mahony, the Director of Motability, has provided figures for the number of DLA claimants who have lost their entitlement to their Motability vehicle as a result of the reassessment for Personal Independence Payment:

As the Department for Work and Pensions (DWP) has reassessed customers receiving DLA, some 21,400 to date have been awarded the same level of mobility support under PIP and have remained on the Scheme. At the same time, we have seen around 17,200 existing Scheme customers lose eligibility to the upper level of mobility support as they are reassessed from DLA to PIP

¹³⁵ The Government's own projections assume that by the time PIP has been fully implemented (May 2018), more than 400,000 fewer claimants will be eligible for the enhanced mobility component than are currently eligible for the higher rate mobility component of DLA See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180964/pip-reassessments-and-impacts.pdf However, because the criteria for PIP enables some disabled people with non-physical impairments to be eligible for the enhanced mobility component who were not previously, it is believed that around 600,000 physically disabled people in receipt of the higher rate mobility component of DLA will lose entitlement to the higher/enhanced rate and therefore their eligibility for the Motability scheme Hansard, Baroness Hollis, HL deb, col 940, 25 February 2013

¹³⁶ <https://hansard.parliament.uk/Lords/2016-05-04/debates/16050467000595/PersonalIndependencePaymentMobilityCriterion>

¹³⁷ ODI (2011) Life Opportunities Survey

¹³⁸ <http://www.scottishruralparliament.org.uk/rural-issues-and-actions/transport-infrastructure/>

¹³⁹ Driven to despair – how drivers have been let down by the Driver and Vehicle Licensing Authority (2016) Parliamentary and Health Services Ombudsman See: <http://www.ombudsman.org.uk/about-us/news-centre/press-releases/2016/new-report-shines-a-light-on-major-failings-by-the-dvla-in-assessing-peoples-fitness-to-drive>

3.16. Article 21 - Freedom of expression and opinion, and access to information

Disabled people continue to face barriers to information

For people with learning disabilities it is ‘surprising and unusual’ to get accessible information.¹⁴⁰ While accessible information is usually available, this offer is made at the end of inaccessible original documents; or released significantly later than originals.¹⁴¹

Since 31 July 2016, all organisations that provide National Health Service care or adult social care have been legally required to follow the Accessible Information Standard.¹⁴² The standard is not however replicated across public services and despite requirements contained in the Equality Act 2010 there is a paucity of accessible information in relation to critical services such as courts and tribunals.

Suggested questions:

What steps will the State Party take to improve the timely availability of information in accessible formats including Easy Read?

Can the state party comment on how well the Principles of Inclusive Communication are being met within public service provision in Scotland?¹⁴³

Availability of sign language interpreters

The All Wales Standards for Communication and information for people with sensory loss and the recent statement on British Sign Language recognises the communication needs of Deaf people accessing public services but does not give adequate recognition to the linguistic rights of Deaf people. The BSL (Scotland) Act (2015) should improve the accessibility of information for Deaf people, but requires promotion and enforcement.¹⁴⁴ Deaf people continue to experience difficulty accessing BSL / English interpreters. In Scotland there are 51 registered

¹⁴⁰ People First (Scotland) Focus Group: Edinburgh September 2016

¹⁴¹ For example, Scottish Government’s white paper on independence was published in November 2013. However, the Easy Read version was not published until May 2014. This meant that people with learning disabilities had only 4 months to get information while their non-disabled peers had 10 months. There is still no BSL information on the Mental Health (Care and Treatment) (Scotland) Act 2003.

¹⁴² The standard aims to make sure that people who have a disability, impairment or sensory loss are provided with information that they can easily read or understand with support so they can communicate effectively with health and social care services.

<https://www.england.nhs.uk/ourwork/accessibleinfo/>

¹⁴³ See here: <http://www.gov.scot/Resource/Doc/357865/0120931.pdf>

¹⁴⁴ See here for an online page where Deaf people share information and express views about the BSL (Scotland) Act (2015) <https://www.facebook.com/groups/1470165406637765/>

interpreters, but over 6000 BSL users. Scottish Government's BSL National Plan is due to be launched in October 2017.

Suggested question:

Can the State Party outline the steps it is taking to increase the availability of British Sign Language interpreters?

3.17. Article 23 - Respect for home and the family

Segregation and isolation from family and community

Significant numbers of inpatients with learning disabilities or mental health problems, including those deprived of their liberty, frequently spend long periods at considerable distance from their families and home communities.^{145,146,147,148}

Suggested question:

Can the State Party outline the steps it is taking to develop community-based alternatives for the treatment and support of disabled people that prevent their isolation and segregation from the wider community?

Separation of children from disabled parents

There is much variation across the country in relation social care practice, and court decisions regarding parents with learning disabilities and their children (and also in relation to parents with mental health conditions and other impairments). In one local authority about one in six family court proceedings involved at least one parent with a learning disability, and in around 75% of these cases the children were permanently removed.¹⁴⁹ Another study, however, found that children

¹⁴⁵ The Learning Disability Census for England 2015 reports that the median average length of stay was 554 days for the 2015 census, compared to 547 in 2014 while the median average distance from home was 38.6km for the 2015 census, compared to 34.4km for the 2014 census. The proportion of inpatients receiving care more than 100km away from home in 2015 was 23 per cent (670 patients) an increase from 19 per cent (570 patients) in 2014.

¹⁴⁶ An investigation by the BBC and Community Care magazine into the care of persons with mental health problems found that among the trusts that provided figures for a five year period, use of out-of-area placements rose 236 per cent, from 1,215 in 2011-12 to 4,093 in 2015-16 See: <http://www.communitycare.co.uk/2016/05/20/mental-health-beds-crisis-thousands-acutely-ill-patients-sent-area-care/> and <http://www.bbc.co.uk/news/health-36333850>

¹⁴⁷ While there has been a decline in resident patients with learning disabilities in Wales since 2006, in March 2016 63% had been resident for 2 years or more. Patients in mental health hospitals and units (31 March 2016) Welsh Government <http://gov.wales/docs/statistics/2016/160831-patients-mental-health-hospitals-units-31-march-2016-en.pdf>

¹⁴⁸ In Scotland, in 2015 around a quarter of all patients had been admitted to an Intensive Psychiatric Care Unit for longer than 90 days. Around 10 per cent had been admitted for longer than 200 days. Intensive Psychiatric Care in Scotland 2015 – Mental Welfare Commission http://www.mwscot.org.uk/media/315618/intensive_psychiatric_case_in_scotland_report_final.pdf

¹⁴⁹ Booth et al, 2005, Care proceedings and parents with learning difficulties, *Child and Family Social Work*, 10,4,353-360.

were permanently removed from their families in less than one fifth of cases involving parents with learning disabilities. Most of these children were fostered rather than adopted.¹⁵⁰

Suggested question:

Can the State Party outline the steps it is taking to ensure that policy and practice concerning child protection consistently respects the rights of disabled parents to family life?

Disabled children in care

The UN Committee on the Convention on the Rights of the Child (UNCRC) has expressed concern about the increased number of disabled children in alternative care settings. While sufficient data is not collected to determine the exact number of disabled children who are looked after there is evidence that they are more likely to be looked after, remain in care for longer and have a higher risk of being placed inappropriately and experience a higher turnover of placements in comparison to non-disabled children.^{151,152}

Suggested question:

Can the State Party outline the steps it is taking to address the disproportionate number of disabled children in alternative care settings and to secure appropriate long term placements?

Family breakdown

Parents with disabled children are more likely to experience relationship breakdown than those who don't have a disabled child.¹⁵³ A 2011 survey by the organisation Contact a Family found that 21% of families with disabled children across the UK said that isolation has led to break up of their family life, including as a consequence of lack of support from statutory services, not having enough money to participate fully and as a result of discrimination and stigma.¹⁵⁴ During our engagement events we

¹⁵⁰ Cleaver,H and Nicholson,D,2007,*Parental Learning Disability and Children's Needs*

¹⁵¹ Baker, C (2011) IRISS Insights, No 11 'Permanence and stability for disabled looked after children'

¹⁵² In 2014, just over one in four of looked after children have SEN associated with learning disabilities (Figure 6.1; Table 6.2). Using the number of children on school rolls in January 2014 as the denominator (the potential number of children for whom data matching could take place) indicates that the risk per 1,000 children of being looked after continuously for at least 12 months by the local authority as of March 31 2014 was five for all children, 23 for children with MLD, 31 for children with SLD, and 40 for children with PMLD – People with Learning Disabilities in England 2015 Public Health England

¹⁵³ Exploring disability, family formation and break-up: Reviewing the Evidence (2008), Department for Work and Pensions

¹⁵⁴ Forgotten Families - The impact of isolation on families with disabled children across the UK (2011) Contact a Family

also heard how the lack of financial assistance to enable the parents and families of Deaf children to learn BSL acts as a barrier to communication within families.

The Scottish Government's Getting It Right for Every Child policy (2009) commits to ensuring that children, young people and their families can rely on appropriate help being available when needed.¹⁵⁵ The Keys to Life strategy (2013) recommends that people with learning disabilities have access to supported parenting services.¹⁵⁶ However, recent research shows 'patchy' implementation across Scotland. This is worrying, given that of the 5,000 parents with learning disabilities in Scotland, between 40% and 60% have their children removed.¹⁵⁷

Suggested question:

Can the State Party outline the steps it is taking to ensure that families with a disabled child/children are supported to enjoy a good family life?

3.18. Article 24 - Education

Reservation and interpretive declaration

On ratifying the CRPD in 2009, the UK government entered a reservation and interpretive declaration regarding Article 24. We believe that these are incompatible with the object and purpose of the Convention and should be withdrawn.

Suggested question:

Can the State Party outline why it believes the reservation and interpretive declaration to continue to be necessary?

¹⁵⁵ <http://www.gov.scot/Topics/People/Young-People/gettingitright/what-is-girfec>

¹⁵⁶ <http://keystolife.info/>

¹⁵⁷ <http://www.sclد.org.uk/evidence-and-research/commissioned-reports/supporting-parents/>

A trend towards non-inclusive schooling

The proportion of disabled children attending special schools has increased, while the numbers attending state-funded secondary schools in England,¹⁵⁸ Wales,¹⁵⁹ and Scotland¹⁶⁰ declined over the past decade.

Following its examination of the United Kingdom in 2016, the Committee on the Rights of the Child recommended that as part of a comprehensive human rights based strategy for inclusion that the State Party:

‘Set up comprehensive measures to further develop inclusive education, ensure that inclusive education is given priority over the placement of children in specialized institutions and classes and make mainstream schools fully accessible to children with disabilities.’¹⁶¹

The Additional Learning Needs and Education Tribunal (Wales) Bill will be introduced to the National Assembly for Wales before Christmas 2016, having first introduced a **White Paper** in May 2014 setting out proposals to introduce a new legislative framework for supporting children and young people with additional learning needs.¹⁶² Support can be provided in mainstream settings, but continuing budget cuts can make this inadequate and result in children being kept out of education for several months.¹⁶³

¹⁵⁸ Between 2010 and 2016 the percentage of children in England with a statement of special educational needs or Education Health and Care Plan attending maintained special schools increased from 38.2% to 42.9% while those attending State funded secondary schools declined from 28.8% to 23.5%. Special Educational Needs in England (January 2016) Department for Education https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539158/SFR29_2016_Main_Text.pdf

¹⁵⁹ In Wales, the number of children attending special schools also rose from 4,040 pupils in 2006-7 to 4542 in 2015-16. Stats Wales Pupils by local authority, region and type of school <https://statswales.gov.wales/Catalogue/Education-and-Skills/Schools-and-Teachers/Schools-Census/Pupil-Level-Annual-School-Census/Pupils/pupil-by-localauthorityregion-typeofschool>

¹⁶⁰ In 2015 there were 15,899 pupils assessed as or declared disabled in Scotland, with 6,920 in Special Schools - a 2.4% rise since 2008. See statistics here: <http://www.gov.scot/Publications/2015/12/7925>

¹⁶¹ Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland* (2016) Committee on the Rights of the Child

¹⁶² See: <http://gov.wales/topics/educationandskills/schoolshome/pupilsupport/additoinal-learning-needs-reform/?lang=en>

¹⁶³ Disabled people have told us that cuts to classroom assistants working alongside teachers has adversely affected the level of support given to disabled children in mainstream classrooms. For example, see the 2012 case of Adam Bojelian: <http://www.viascotland.org.uk/node/455>

Suggested question:

What strategies and actions is the State Party adopting to improve the capacity of mainstream schools to successfully include disabled children?

School exclusions

Research into school exclusions across the UK has identified that disabled children and those with additional needs are more likely to be excluded from school, and this includes unlawful exclusions.^{164,165}

Suggested question:

What measures is the State Party taking to reduce the number of school exclusions of disabled pupils?

Educational attainment

Although not all children identified as having special education needs (SEN) are disabled, and not all disabled children have SEN, data concerning children with SEN in England and Wales provides a strong indicator of the situation of disabled children generally. The attainment gap at some (though not all) qualification points between students with SEN and those without has grown since 2009 in both England and Wales.¹⁶⁶ In Scotland, 16.2 per cent of deaf young people leave school with no qualifications, compared with 4.8% of school leavers generally. The British Deaf Association (BDA) say a lack of understanding about levels of deafness means a concurrent lack of appropriate support for deaf students.¹⁶⁷

¹⁶⁴ Children's Commissioner for England (2013) 'School Exclusion Inquiry Report: Always Someone Else's Problem'; Contact a Family (2013) 'Falling through the net, Illegal exclusions the experiences of families with disabled children in England and Wales

¹⁶⁵ 5.17% of pupils with SEN without a statement received one or more fixed period exclusion in 2013/14 compared to 6.42% of pupils with statements and 1.08% of pupils with no SEN Absence and exclusions additional analysis for pupils with special educational needs (SEN) (January 2016) Department for Education
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495651/SEN_Absence_Exclusions_ad_hoc_release_v4.pdf

¹⁶⁶ The Equality and Human Rights Commission research for 'Is Britain Fairer?' revealed significant inequalities in education: In England 18.5% of children with SEN achieved a 'good level of development' compared to 65.6% of those without, and 23.4% of children with SEN achieved at least five A*-C GCSEs, compared with 70.4% of those without. This 'attainment gap' had actually increased since 2009. Wales had also seen an increased gap, although it had narrowed in Scotland
http://www.equalityhumanrights.com/sites/default/files/uploads/IBF/Evidence-papers/IBF_EPS_E_Education_final.pdf

¹⁶⁷ British Deaf Association (April 2015) Attainment of school pupils with a sensory impairment: Submission to the Scottish Parliament's Education and Culture Committee

Suggested question:

What goals and strategies does the State Party have to close the educational attainment gap between disabled and non-disabled children and adults?

Support for participation in Higher Education

The government has acknowledged that reforms to Disabled Students Allowance (DSA), which came into force on 1 September 2016, are likely to have a number of negative effects on the rights of disabled people.¹⁶⁸ In mitigation, the government anticipates that higher education institutions will absorb some related costs as part of their obligation to make reasonable adjustments under s20 of the Equality Act 2010. However, in doing so it has also recognised that this may 'increase the potential for discrimination by institutions in circumstances where they fail to comply with those duties.'¹⁶⁹

Suggested question:

How is the State Party monitoring the impact of its reforms of Disabled Student Allowance and what steps will it take if there is an increase in discrimination by higher education institutions following these changes?

3.19. Article 25 - Health

Disabled people still have poorer health access and outcomes

People with learning disabilities have a higher level of unmet health need than the general population and are more likely to receive poorer medical care.¹⁷⁰

The Confidential Inquiry into Premature Deaths of People with Learning Disabilities (CIPOLD), funded by the Department for Health found that men with learning disabilities die, on average, 13 years sooner than men in the general population, and women with learning disabilities died 20 years sooner than women in the general population. 43% of the deaths

¹⁶⁸ Disabled Students Allowance Consultation – Equality Analysis (December 2015) Department for Business, Information and Skills

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/481527/bis-15-658-disabled-students-allowances-equality-analysis.pdf

¹⁶⁹ Ibid

¹⁷⁰ Emerson and Baines (2010): Health Inequalities and People with Learning Disabilities in the UK: https://www.improvinghealthandlives.org.uk/uploads/doc/vid_7479_IHaL2010-3HealthInequality2010.pdf

Note that there is little up-to-date research on health inequality, specifically in relation to people with learning disabilities.

of people with learning disabilities were unexpected.¹⁷¹ The inquiry identified avoidable delays in diagnosis, further investigation or specialist referral, the failure of healthcare providers to make reasonable adjustments (accommodation) and poor coordination between care providers as major contributory factors. It also identified lack of adherence to and understanding of the Mental Capacity Act 2005 in particular regarding assessments of capacity, the processes of making 'best interest' decisions and when an Independent Mental Capacity Advocate (IMCA) should be appointed. The Department of Health reported in September 2014 on action taken following the report, but has not reported since.¹⁷²

Nearly half (46%) of people with severe mental health problems have a long-term physical health condition and are at risk of losing on average 10-20 years of their lifespan due to physical ill-health.¹⁷³ Despite inequality in health outcomes, funding has reduced for mental health voluntary recovery services.

Inaccessible health screening

During engagement disabled women reported physically inaccessible cancer screening centres. This supports evidence that disabled people are less likely to receive health checks, screening tests and treatment.¹⁷⁴

Mental health care

Mental health services are chronically underfunded. 75% of people with common mental health problems such as anxiety and depression, receive no appropriate treatment; while only 65 per cent of people with severe mental health problems receive treatment.¹⁷⁵

¹⁷¹ Heslop P et al Confidential Inquiry into premature deaths of people with learning disabilities (CIPOLD) Final report (2013) University of Bristol <http://www.bristol.ac.uk/cipold/reports/>

¹⁷² Premature Deaths of People with Learning Disabilities Progress Report (September 2014) Department for Health https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/356229/PUBLISH_427_15_2902809_Progress_Report_Accessible_v04.pdf

¹⁷³ Improving the physical health of adults with severe mental illness: essential actions' (2016) - A report of the Academy of Medical Royal Colleges and the Royal Colleges of General Practitioners, Nursing, Pathologists, Psychiatrists, Physicians, the Royal Pharmaceutical Society and Public Health England

¹⁷⁴ 'How Fair is Britain, Equality, Human Rights and Good Relations in 2010 Chapter 6 (2010) Equality and Human Rights Commission

¹⁷⁵ Ormel et al, Disability and treatment of specific mental and physical disorders across the world, British Journal of Psychiatry, 2008

Suggested question:

What steps is the State Party taking to ensure that disabled people enjoy equal access to healthcare and the highest attainable standard of health?

Cost of health care

The ability of disabled people to manage their health and prevent further impairment – by accessing foods required on the basis of disability - is being jeopardized by restricted access to, and the maladministration of social security benefits.¹⁷⁶

Suggested question:

How will the state party ensure that citizens have food security and do not endure ill-health/further ill-health or impairment as a result of poor food security?

Social security administration may have exacerbated mental ill-health and increased suicide risk

We are concerned by evidence that suggests that the administration of social security benefits may have been an attributing factor in the decision of some people with mental health problems to take their own lives. We address this issue in more detail under Article 25 - right to health, but consider that it may raise issues concerning the States obligation to protect people's right to life.

Suggested Question:

How will the state party ensure the impacts of its social security policies do not have an adverse impact of the mental health of citizens?

3.20. Article 27 - Work and employment

Public expenditure measures have led to regression

We note and support the findings and recommendations of the CRPD Committee's Inquiry concerning the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 7 November 2016.

The disability pay gap

A significant pay gap of 9% between disabled and non-disabled people persists. In 2013, disabled people had an average pay rate of

¹⁷⁶ The case of David Clapson is illustrative: <http://www.independent.co.uk/news/uk/benefits-sanction-resulted-in-my-brother-david-clapson-s-death-says-gill-thompson-as-she-pleads-for-a6911386.html>

UK Government collects statistics about death when benefits removed: <http://www.dailydot.com/layer8/uk-welfare-benefits-death-statistics/>

£9.70/hour, which was almost £1.00/hour lower than that of non-disabled people (£10.60/hour).¹⁷⁷ For disabled women this is more acute, with a pay gap of 22% in relation to non-disabled men.¹⁷⁸

Measures to close the disability employment gap have been largely ineffective

Successive governments have tightened social security eligibility criteria, extended and increased the severity of conditionality and sanctions and cut the rates of benefit payments for disabled people receiving disability related out of work benefits under the rubric of ‘welfare to work.’

However, there is little evidence that measures to support disabled people into work have been effective.¹⁷⁹ The UK employment rate of disabled people is 48%, which represents a 32% gap between disabled and non-disabled people’s employment rate.¹⁸⁰ In Scotland the gap is almost 40 per cent.¹⁸¹ These figures obscure deep inequalities among disabled people. For example, just 5.8% of adults with a learning disability known to local authorities in England are in a job.¹⁸²

The UK government has committed to halving this gap, but have said this target is ‘aspirational’ and have set no timeline. In contrast, the Scottish Government has committed to half the disability employment gap in Scotland by 2021.¹⁸³

In October 2016 the UK Government launched a Green Paper heralding potentially more promising approaches to employment support, including peer support for employment, work experience for young disabled people and an innovation fund. However, the Employment Related Support Association estimates that the planned reduction in funding from the current Work Programme and Work Choice to the new Work and Health Programme will lead to a reduction in numbers of disabled people supported from 300,000 to 160,000 over a 2.5-year period.¹⁸⁴

¹⁷⁷ Is Britain Fairer? Evidence Paper Series Domain G – productive and valued activities (2016) Equality and Human Rights Commission <https://www.equalityhumanrights.com/en/britain-fairer/britain-fairer-report/supporting-evidence/productive-and-valued-activities-domain>

¹⁷⁸ EHRC (2010) How fair is Britain: The first triennial review

¹⁷⁹ The Work Programme (July 2014) National Audit Office <https://www.nao.org.uk/wp-content/uploads/2014/07/The-work-programme.pdf>

¹⁸⁰ Office for National Statistics. Labour Force Survey, Q2 2016; 2016.

¹⁸¹ Latest Labour market statistics for Scotland: <http://www.gov.scot/Topics/Statistics/Browse/Labour-Market/AnalyticalPapers>

¹⁸² NHS Digital. Adult Social Care Statistics; 2016.

¹⁸³ Scottish Government (2016) A Fairer Scotland for Disabled People: Our delivery plan to 2012 for the UNCRPD

¹⁸⁴ See: <http://ersa.org.uk/media/ersa/ersa-statement-new-work-and-health-programme-green-paper>

Suggested question:

Can the State Party clarify its objectives and how they will be implemented with respect to halving the disability employment gap?

Significant skills and qualifications gap

The UK Government has recently announced measures to make apprenticeships more inclusive, and have supported specific initiatives to spread good practice. The Welsh Government intends to create a minimum of 100,000 all-age apprenticeships. These developments are welcome. Nonetheless, disabled people informed us that work experience is often not accessible; and strategies to improve formal skills and qualifications continues to be a ‘missing link’ in policy and programmes to improve the employment opportunities of disabled people. The government’s recent Green Paper on disability employment links together policy on health and employment: there is a similar need to ‘join up’ employment and skills policy.

Suggested question:

What goals and strategies has the State Party adopted to enhance the formal skills and qualifications of disabled people; and to ensure disabled people have access to high quality work experience and traineeships?

The aim of UK government action to engage employers is unclear

In 2013 the UK Government launched ‘Disability Confident’ to promote the value of employing disabled people to employers. It was unclear what the precise aims of the programme were and is not clear at this point what the achievements have been. The scheme has recently been relaunched, with 3 levels of commitment that employers can make on a basis of self-assessment with peer monitoring and review at level 3. However, it could in theory grow without impacting on actual numbers of disabled people employed, since employers commit to processes, not outcomes.

Suggested questions:

Can the State party outline how it will incentivise and support employers – particularly in growth areas of the economy – to employ significantly more disabled people?

Can the state party confirm how the Scottish and Welsh Governments are working to engage and influence employer practice regarding the rights of disabled people?

Reservation concerning employment in the armed forces

On ratifying the CRPD in 2009 the UK Government entered a reservation regarding Article 27 concerning employment of disabled people in the armed forces. Following a consultation in 2010, the Ministry of Defence (MOD) continued to insist on a blanket exemption of the armed forces from the Equality Act 2010 and to maintain the reservation to Article 24. It is our contention that the exemption is unnecessary as the MOD would continue to be able to define objective and necessary job criteria including in relation to levels of physical and mental fitness and this therefore does not present a threat to operational effectiveness. As such, and given the broad discriminatory nature of the reservation, we believe that it is incompatible with the object and purpose of the Convention.

Suggested question:

To ask the State Party to conduct a further review of the reservation, including a public consultation.

3.21. Article 28 - Adequate standard of living and social protection

We note and support the findings and recommendations of the CRPD Committee's Inquiry concerning the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 7 November 2016.

Living standards for disabled people continue to decline.

Section 15 of the Welfare Reform and Work Act (2016) reduces entitlement of people in the Work Related Activity Group of Employment Support Allowance by £30 per week, from 2017. Nearly 60% of people in this group remain out of work 2 years later. This move does not overcome employment barriers, but simply reduces living standards.

Social security changes will have a detrimental impact on disabled women

Women are twice as dependent on social security as men due to disadvantage in the labour market. For disabled women this is more acute, with a pay gap of 22% in relation to non-disabled men.¹⁸⁵ Paying Universal Credit (UC) to one 'household' will perpetuate asymmetric gender power relations. This is particularly concerning for disabled

¹⁸⁵ EHRC (2010) How fair is Britain: The first triennial review

women, who continue to be more vulnerable to domestic violence.^{186,187,188}

Suggested question:

How will the State Party ensure disabled women are not forced into financial dependence and continued marginalisation in the labour market?

Scottish Government promises a devolved social security system based on dignity and respect

This follows consultation with disabled people and their organisations.^{189,190} A Social Security Bill is anticipated during 2017.

Suggested questions:

How will the state party address its failure to meet its obligations under CRPD article 28?

Can the state party outline the progress of social security plans, in relation to disability, in Scotland?

Unmet need for accessible housing

There is a significant shortfall in the availability and supply of accessible housing and no legal or regulatory mechanism to guarantee the increased supply of accessible housing in England, Wales and Scotland.^{191,192,193,194} 201,000 Scottish households cannot access

¹⁸⁶ <https://holyrood.engender.org.uk/content/resources/Gender-Matters-in-Social-Security---Individual-Payments-of-Universal-Credit.pdf>

¹⁸⁷ Women's Aid (2007) Disabled women and domestic violence: Making the links

¹⁸⁸ A 2015 survey of disabled women in Glasgow found that 73% had experienced abuse See here for key messages: <http://www.zerotolerance.org.uk/resources/violence-against-disabled-women-survey?destination=node%2F340%3Fpage%3D1%26type%3D28%26subject%3D30&vaw=1>

¹⁸⁹ See Scottish Government (2015) Social Security for Scotland: Benefits being devolved to the Scottish Parliament: <http://www.gov.scot/Resource/0047/00473452.pdf>

¹⁹⁰ See here for information and documents: <https://consult.scotland.gov.uk/social-security/social-security-in-scotland>

¹⁹¹ Research jointly published by Habinteg Housing and the Papworth Trust in August 2016 concludes that at least 1 in 6 households that need accessible homes do not currently have all the accessibility features they need – equating to 300,000 households The Hidden Housing Market – A new perspective on the market case for accessible homes (2016) Habinteg Housing and Papworth Trust <http://www.habinteg.org.uk/hidden-housing-market>

¹⁹² Research jointly published by Habinteg Housing and the Papworth Trust in August 2016 concludes that at least 1 in 6 households that need accessible homes do not currently have all the accessibility features they need – equating to 300,000 households The Hidden Housing Market – A new perspective on the market case for accessible homes (2016) Habinteg Housing and Papworth Trust <http://www.habinteg.org.uk/hidden-housing-market>

¹⁹³ <http://www.gov.scot/Publications/2014/12/6903/0>

¹⁹⁴ <http://horizonhousing.org/static-content/wysiwyg-downloads/Horizon-Housing-Mind-the-step-report.pdf>

essential facilities in their own home and could therefore be treated as homeless under the Housing (Scotland) Act 1987.^{195,196}

Suggested questions:

Can the State Party comment on whether social security payments to assist with housing will be paid at levels sufficient to meet the housing costs of disabled people?

3.22. Article 29 - Participation in public and political life

Disabled people face barriers registering to vote

While persons deemed to lack capacity are permitted to vote in elections, the introduction of a new system of voter registration has created a significant barrier to doing so. People are now required to register individually and to complete a 'declaration of truth.' Guidance from the Electoral Commission says that third parties can assist a person in making this declaration but that crucially the person must still have the mental capacity to make the declaration of truth.¹⁹⁷ Not being on the electoral register not only acts to effectively disenfranchise individuals, it can affect people's ability to access financial services, such as credit and insurance. Failure to register to vote when requested to do so by an Electoral Registration Officer is an offence.

Suggested question:

How will the State Party amend rules regarding voter registration to ensure that disabled people are not disenfranchised?

Voting procedures continue to be inaccessible

Scope found that two-thirds of polling stations had one or more significant access barriers at the 2010 General Election.¹⁹⁸ The Electoral Commission since developed guidance for disabled voters and for polling station staff and noted in a news release prior to the 2015 general election that there should be no barriers to someone casting their vote.¹⁹⁹ However, a survey by the Leonard Cheshire Foundation found that almost a quarter (24%) of disabled people found it difficult to

¹⁹⁵ See Scottish House Condition Survey 2012

¹⁹⁶ The Act provides that a person is to be treated as homeless even if he or she has accommodation, if it would not be reasonable for the person to continue to occupy it

¹⁹⁷ See: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/176168/IER-Guidance-on-assisted-applications-in-England-and-Wales.pdf

¹⁹⁸ Polls Apart Report 2010 Scope

<http://www.scope.org.uk/Scope/media/Documents/Publication%20Directory/Polls-apart-2010.pdf>

¹⁹⁹ Polling Station Accessibility Checklist (2011) Electoral Commission

vote in person at polling stations at the general election on 7 May 2015.²⁰⁰

Suggested question:

Can the State Party outline what further measures it will take to promote and enforce equal access to voting for disabled people at elections?

Data on disabled people's participation in politics is not collected

The exact number of disabled members of the UK, Scottish or Welsh Parliaments is not known as such data is not collected. This is despite a recommendation by the Speakers Conference on Parliamentary representation that the Houses of Parliament should collect data about under-represented groups.²⁰¹ A provision in the Equality Act 2010 (s106) for political parties to publish diversity data about their candidates has also not been enacted.²⁰²

Suggested question:

Will the State Party make arrangements to collect data on the political representation of disabled people in the UK and Scottish Parliament's and National Assembly for Wales and enact s106 of the Equality Act 2010?

Financial support for disabled people wishing to stand for election

The UK coalition government 2010-15 established the access to elected office (AEO) fund in 2012. The fund offered grants of between £250 and £40,000 to disabled people to help with additional costs they may face in standing for election as a councillor or MP, such as extra transport or sign language interpreters. However the scheme was put on hold after the May 2015 general election.²⁰³ In contrast, Scottish Government launched the Democratic Participation Fund (2016), covering additional costs for disabled people who wish to stand for selection or election in Scotland's 2017 local government elections.²⁰⁴ Welsh Government runs the Diversity in Democracy Programme²⁰⁵ aimed at increasing the diversity of individuals standing for election to local government. However there is no fund to support disabled people with meeting the

²⁰⁰ <https://www.leonardcheshire.org/support-and-information/latest-news/news-and-blogs/barriers-voting-one-four-disabled-voters-found>

²⁰¹ <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-conference-on-parliamentary-representation/>

²⁰² <http://www.legislation.gov.uk/ukpga/2010/15/part/7>

²⁰³ <https://www.gov.uk/access-to-elected-office-fund/overview>

²⁰⁴ See here for announcement and details: <http://news.scotland.gov.uk/News/Democratic-participation-fund-for-disabled-people-22c8.aspx>

²⁰⁵ See: <http://gov.wales/topics/localgovernment/diversity-in-democracy/?lang=en>

costs of reasonable adjustment in standing as an elected member e.g. communication support.

Following the 2015 General Election, the Electoral Commission recommend that:

‘Governments with legislative competence over elections within the UK should amend the definitions of political party and candidate spending so that reasonable expenses that can be attributed to an individual’s disability are exempt, (as was recently set out in the revised PPERA rules for non-party campaigners).’

Suggested question:

What steps will the State Party take to ensure that costs related to disability do not provide a barrier to disabled people seeking elected office?

Disabled people are under-represented among public appointees

In England, the percentage of appointments and reappointments made to disabled people has declined from 8.6% in 2010-11 to 4.1% in 2015-16.²⁰⁶ UK Government is currently working with the Disability Action Alliance to improve public appointment levels amongst disabled people, with the involvement of the Commissioner for Public Appointments.

In Scotland, only 12.7% of public appointments are currently held by disabled people.²⁰⁷ In 2008 the Scottish Government set a target to have 15% of all public appointments held by disabled people.²⁰⁸ No timescale was provided.

In Wales, Welsh Government has made a commitment to improve equal representation on public sector boards so that they better reflect the whole of society. No specific targets exist to increase representation of disabled people.

²⁰⁶ Annual Survey of Ministerial Appointments and Re-Appointments by the Commissioner for Public Appointments 2015-16 (August 2016) Commissioner for Public Appointments

²⁰⁷ <http://www.appointed-for-scotland.org/about-public-bodies/diversity/>

²⁰⁸ The Office for the Commissioner of Public Appointments in Scotland (2008) Diversity Delivers: a strategy for enhancing equality of opportunity in Scotland’s ministerial public appointments process: <http://www.publicappointments.org/site/uploads/publications/9081470494a9d103ac08481.79691631.pdf>

Suggested question:

Could the State Party outline the targets and strategies it has adopted to address disabled people's underrepresentation among public appointees?

3.23. Article 33 – National implementation and monitoring

Article 33.1 – Focal points and coordinating mechanism

The Office for Disability Issues (ODI), situated in the Department for Work and Pensions, which administers social security and arranges employment support, is the UK focal point. Focal points also exist in each of the devolved jurisdictions. Since the Convention was ratified in 2009 the ODI has been subject to a significant reduction in dedicated resources and staff. It is unclear by what mechanism it provides direction and ensures implementation of the Convention across government departments, the devolved jurisdictions, local government and public bodies.

Article 33.2 – Monitoring framework

The Equality and Human Rights Commission has been subject to a 75% budgetary cut (contrasted with average real cuts to government department spending of 9.7% 2010/11-2015/16) and has recently been required to implement a further 25% cut to its current budget. Following the latest budget cut the Commission's staffing levels are expected to be reduced to 176, compared to 525 staff in 2007/8. Despite its wide remit, the Commission's financial resources and staff complement are now lower than that of the specialised Disability Rights Commission that it replaced in 2007. Such significant cuts in resources have had an undoubtedly negative impact on the Commission's capacity to promote and enforce equality legislation and the rights of disabled people more generally. For example, the Disability Rights Commission directly supported an average of 55 disability discrimination legal cases in the courts and tribunals each year between 2000-2007.²⁰⁹ In contrast, the EHRC has supported or intervened in an average of 37.5 cases per year, spanning seven 'protected characteristics' including disability, as well human rights.²¹⁰

²⁰⁹ Evaluating the impact of the Disability Rights Commission Final Report (2007) <http://disability-studies.leeds.ac.uk/files/library/DRC-Evaluating-the-impact-of-the-Disability-Rights-Commission-FULL-EPORT.pdf>

²¹⁰ Source: <https://www.equalityhumanrights.com/en/legal-casework/our-legal-work-action>

The government has also repealed the duties and powers of the Commission²¹¹ and has limited its capacity to discharge its existing powers via the targeted cutting of financial support. For example, the Commission no longer has a duty to promote good relations and does not provide advice and assistance via a Helpline (this has been outsourced by government). The Commission's statutory Disability Committee will cease to exist in 2017.

The government has not identified a framework under Article 33.2 beyond the four equality and human rights bodies in England and Wales, Scotland and Northern Ireland. For example, the Children's Commissioners for England and Wales, the Older Persons Commissioner for Wales, the Care Quality Commission and Care and Social Services Inspectorate Wales and the school inspectorates Ofsted and Estyn are not identified as part of a framework and it is unclear how embedded the UNCRPD is in their work.

Article 33.3 – Involvement of civil society in monitoring

In its initial report to the UNCRPD Committee in 2011, the UK government refers to several ways that it was involving disabled people in monitoring implementation of the Convention, including via the 'Network of Networks' and Equality 2025'. These mechanisms no longer exist and it is unclear whether their replacements replicate the extent and depth of involvement envisaged by the UNCRPD, especially in relation to the Convention.

As noted above, in March 2017 the statutory Disability Committee which forms part of the official governance of the Equality and Human Rights Commission will be replaced by an advisory group.

Suggested question:

Could the State Party update and expand upon its response to the OHCHR survey "Human rights of persons with disabilities: national frameworks for the promotion and protection of the rights of persons with disabilities"? In particular, could it explain how it is:

- ensuring an effective approach to national implementation and monitoring across the UK,
- its approach to coordinating implementation of the Convention across Whitehall,

²¹¹ The Enterprise and Regulatory Reform Act 2013 removed the duties and powers of the EHRC to promote good relations and to arrange conciliation. It also amended the Commission's duties to report on progress towards equality and human rights.

- coordinating implementation of the Convention across the devolved administrations, public authorities and other sectors

DRAFT

Annex 1 – Devolution of powers to Scotland and Wales

Powers devolved to the Scottish Government

Schedule 5 of the Scotland Act (1998) established a Scottish Parliament and devolved the following policy areas to Scotland:

1. agriculture, forestry and fisheries
2. education and training
3. environment
4. health and social services
5. housing
6. law and order
7. local government
8. sport and the arts
9. tourism and economic development
10. some aspects of transport

The Scotland Act 2012 transferred additional powers, including:

11. a Scottish rate of income tax from April 2016
12. new borrowing powers for the Scottish Government
13. full control of stamp duty, land tax and landfill tax from April 2015
14. power to introduce new taxes, subject to agreement of the UK Government

Following the referendum on Scottish independence on 18 September 2014, a process is now underway to transfer further powers to the Scottish Parliament around taxation, social security, including disability benefits, and elections. This has been substantiated by the Scotland Act 2016.

Powers devolved to the National Assembly for Wales

Schedule 7 to the Government of Wales Act 2006 defines the scope of the Assembly's legislative competence to make Assembly Acts, within areas where the Welsh Ministers exercise executive functions. Schedule 7 categorises the existing areas of policy responsibility devolved to the

Welsh Government into 20 broad areas. These areas, known as 'subjects', are:

1. agriculture, fisheries, forestry and rural development
2. ancient monuments and historic buildings
3. culture
4. economic development
5. education and training
6. environment
7. fire and rescue services and promotion of fire safety
8. food
9. health and health services
10. highways and transport
11. housing
12. local government
13. National Assembly for Wales
14. public administration
15. social welfare
16. sport and recreation
17. tourism
18. town and country planning
19. water and flood defence

Welsh language

Any area not listed in Schedule 7 is non-devolved and would be matters on which Parliament would legislate. It should be borne in mind that Welsh Ministers exercise some executive competence in areas which are otherwise non-devolved.