

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

Shadow Report from Scotland

Inclusion Scotland, in partnership with -
Self-Directed Support Scotland, People First (Scotland)
Glasgow Disability Alliance, Lothian Centre for Inclusive Living, Glasgow Centre for Inclusive Living, Voices of Experience, the British Deaf Association, the Scottish Council on Deafness and Professor Nicholas Watson of the University of Glasgow.

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1. Introduction

This report identifies key issues on the implementation of the United Nations Convention on the Rights of Disabled People (UNCRPD) in Scotland. Scotland is a nation within the UK State Party and has a Parliament with powers over a range of policy areas.¹

This report has been produced by a partnership of ten disabled people's organisations (DPOs) and one academic in Scotland: Inclusion Scotland (lead partner), People First Scotland, Glasgow Centre for Inclusive Living, Lothian Centre for Inclusive Living, Self-Directed Support Scotland, Glasgow Disability Alliance, the Scottish Council on Deafness, the British Deaf Association, Voices of Experience, and Professor Nicholas Watson from the University of Glasgow. The work to produce the report was funded by the Equality and Human Rights Commission and the Scottish Human Rights Commission.

For this report our partnership facilitated two consultation events and five focus groups, covering a range of geographical areas and impairment groups. Partners additionally contributed internal reports and evidence; and referred to the shadow report which was written by Inclusion Scotland in 2014, in preparation for the UK state party's original review date. The process was co-ordinated by Inclusion Scotland, also the lead author.

The report addresses the CRPD articles we wish to report on, in order of their appearance in the Convention. It provides suggested questions for the UK state party, with a particular emphasis on CRPD implementation in Scotland.

Should the committee require additional information on any aspects of this report, please contact Dr Rosalind Tyler-Greig - rosalind@inclusionScotland.org

¹ Devolved matters at a glance: <http://www.parliament.scot/visitandlearn/education/18642.aspx>

1.1. Cross-cutting issues:

There are three cross-cutting issues which have implications across a number of articles.

- Austerity cuts to national and local public expenditure and changes in UK social security policy are impacting on a range of rights, particularly under articles 19, 20, 25, 27, 28 and 30. We support the findings of the CRPD committee's inquiry into the UK state party's implementation of the Convention.²
- Independent Advocacy services, including specialist services, are underfunded and cannot meet need. This compromises the ability of disabled people to identify and access appropriate support to claim their rights, particularly in relation to articles 12, 13, 14, 26 and 28.
- Inadequate provision of accessible information affects rights under a range of articles and is not limited to Article 9. In particular, people with learning disabilities, Deaf people and hard of hearing people find it challenging to obtain all the accessible information they require.

² CRPD (Oct 2016) Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7

1. Implementation in Scotland

1.1. Article 6 – Women with disabilities

Universal Credit introduces a single monthly household payment of social security benefits, increasing the risk of abuse for vulnerable women.³

Half of disabled women experience domestic abuse, compared with one in four non-disabled women. The figure may in fact be higher.^{4,5}

Women are twice as dependent on social security as men, and disabled women more so due to marginalisation in the labour market.⁶ Disabled women continue to experience disadvantage in the labour market, with a 22% pay gap between disabled women and non-disabled men.⁷

The Scottish Government has expressed support for splitting the household payment of UC between partners, but has not yet made a policy commitment.⁸

Suggested question:

What action, including within social security policy, will Scottish Government take to prevent and remedy domestic abuse against disabled women and girls?

Abortion policy is to be devolved to Scotland.

We urge Scottish Government to fully account for disabled women's reproductive rights in drafting this policy.

Suggested question:

Will the state party ensure that the reproductive health and rights of disabled women are protected on an equal basis with non-disabled women, and consult women and women's organisations in Scotland before considering any change to abortion policy?

³ See p.8 of Scottish Women Aid's response to Scottish government social security consultation for explanation:

<http://www.scottishwomensaid.org.uk/sites/www.scottishwomensaid.org.uk/files/Scottish%20Women's%20Aid%20response%20to%20Consultation%20on%20Social%20Security%20in%20Scotland.pdf>

⁴ Women's Aid (2007) Disabled women and domestic violence: Making the links

⁵ A 2015 survey of disabled women in Glasgow found that 73% had experienced abuse

<http://www.zerotolerance.org.uk/resources/violence-against-disabled-women-survey?destination=node%2F340%3Fpage%3D1%26type%3D28%26subject%3D30&vaw=1>

⁶ Engender (2016) Securing Women's Futures: using Scotland's new social security powers to close the gender equality gap

⁷ EHRC (2010) How fair is Britain: The first triennial review

⁸ Engender (2016) Gender Matters in Social Security: Individual Payments of Social Security.

1.2. Article 7 – Children with disabilities

Financial support for disabled children has reduced under Universal Credit.

100,000 families across the UK will lose around £1,500 each per year. Alongside implications detailed under Article 6, the care of disabled children will be adversely impacted.

Some local health boards fail to see child and adolescent mental health patients within the target of 26 weeks.⁹ 77.6% of referrals made to Child and Adolescent Mental Health Services (CAMHS) in Scotland are seen within 18 weeks. Deaf and Deafblind children cannot access BSL mental health services in Scotland.

Suggested question:

Can the state party outline any plans to improve the accessibility of CAMHS?

1.3. Article 8 – Awareness raising

An increase in negative media portrayals of disabled people has been documented, despite awareness campaigns like See Me.^{10,11,12} Nonetheless, **‘you only see [disabled people] in papers and TV when they have done something bad or when something really bad happened to them’**.¹³

Political and cultural representations of disability perpetuate hate crime.¹⁴ Scottish Government and Police Scotland ran a hate crime awareness campaign, established third party reporting centres and widened hate crime law through the introduction of The Offences (Aggravation by Prejudice) (Scotland) Act in 2010.¹⁵ However, more is required to challenge culture and boost confidence in reporting.

⁹ NHS (August 2016) Child and Adolescent Mental Health Services Waiting times in NHS Scotland: <https://isdscotland.scot.nhs.uk/Health-Topics/Waiting-Times/Publications/2016-09-06/2016-09-06-CAMHS-Report.pdf>

¹⁰ For example, see See Briant et al (2015) Bad News for Disabled People: *Strathclyde Centre for Disability Research*.

¹¹ <https://www.seemescotland.org/>

¹² See Briant et al (2015) Bad News for Disabled People: *Strathclyde Centre for Disability Research*. Additionally, a focus group run by VOX with mental health service users heard that those with mental health conditions feel particularly stigmatised.

¹³ Focus Group, People First: Sept 2016

¹⁴ See Article 16

¹⁵ See here for info about awareness raising and third party reporting centres: <http://www.hatecrimescotland.org/home/hate-crime-week-2016/>

Suggested Question:

What positive action will the state party take to raise disability awareness and reduce disabled people's experience of hate crime and discrimination?

1.4. Article 9 – Accessibility

Transport accessibility remains inadequate

Wheelchair users have priority spaces on public buses, but law and guidelines are unclear and this is difficult to enforce.¹⁶ Spaces are also too small.

Limited rural transport continues to lead to isolation.¹⁷ And rural train stations often do not have step free access or staff.¹⁸ Larger stations have accessibility provision which must be booked in advance. While better, spontaneous journeys are difficult. Additionally, train companies' "commitment to providing, wherever possible, clear and consistent audio and visual information" on trains and at stations is not consistently implemented.^{19,20}

40% of Scotland's local authorities do not enforce accessibility requirements for taxis.²¹ Further, 400-500 Motability vehicles per week are being returned because of eligibility changes for disability benefits.²²

Public place design does not fully account for accessibility

There is inconsistent use of tactile paving, pedestrian crossings, dropped kerbs and accessible signage. Scottish Government's 'Designing Streets' policy introduces 'shared spaces' for traffic and pedestrians.²³ This has been implemented in one local authority area, and described as 'terrifying' by disabled residents.²⁴ Generally, disabled

¹⁶ EHRC evidence in support of Bus Services Bill 2016 <file:///C:/Users/SueKelly/Downloads/bus-services-bill-house-of-lords-report-stage-briefing-24-october-2016.pdf>

¹⁷ <http://www.scottishruralparliament.org.uk/rural-issues-and-actions/transport-infrastructure/>

¹⁸

https://www.scotrail.co.uk/sites/default/files/assets/download_ct/disabled_peoples_protection_policy_-_helping_older_and_disabled_passengers_-_october_2016_1mb.pdf

¹⁹ This is UK Government policy - <http://orr.gov.uk/info-for-passengers/passengers-with-disabilities>

²⁰ Evidence from disabled people during consultations and events has consistently made this point.

²¹ 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

²² <https://hansard.parliament.uk/Lords/2016-05-04/debates/16050467000595/PersonalIndependencePaymentMobilityCriterion>

²³ Policy document: <http://www.gov.scot/resource/doc/307126/0096540.pdf>

²⁴ See here for a news story detailing the problem: <http://www.bbc.co.uk/news/uk-scotland-32393984>

people feel ‘aggrieved’ and overlooked in the scheme’s implementation.²⁵

Suggested Question:

What steps has the state party taken to adopt an accessibility plan covering all aspects of accessibility - including the physical environment, transport, information and communications, and technology – and eliminating barriers in both rural and urban locations within a reasonable timeframe?

1.5. Article 10 – Right to life

Emerging evidence suggests that UK Government social security policy undermines mental health and has occasionally lead to death, including as a result of suicide, among vulnerable disabled people.²⁶ Mental Health charities have identified a link between social security concerns and increased suicide risk.²⁷ The Mental Welfare Commission has shown increased suicide risk for those with mental illness completing the Work Capability Assessment.²⁸ A link between benefit loss and death has been acknowledged internally by the UK DWP, but has been consistently disregarded by ministers.²⁹ While we recognise that this may not be sufficient in demonstrating a failure of the State to protect Article 10 rights, the implications of welfare reform on the lives of disabled people is nonetheless alarming.

Suggested question:

What plans does the state party have to move away from a penalty system within social security?

²⁵ Scottish Disability Equality Forum (June 2016) Shared Space Scheme Kirkintilloch report

²⁶ See Calum’s list compiled by Dr Stephen Carty, a GP in Leith, Edinburgh:
<http://calumslist.org/>

²⁷ For example, see 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

²⁸ See this case report: http://www.mwscot.org.uk/media/180939/who_benefits_final.pdf

²⁹ <https://www.theguardian.com/society/2016/may/13/suicides-of-benefit-claimants-reveal-dwp-flaws-says-inquiry>

1.6. Article 12 – Equal Recognition before the law

The Adults with Incapacity (Scotland) Act 2000 is incompatible with CRPD article 12, and the number of applications for welfare guardianship orders in Scotland, under the Act, has risen.³⁰

Substitute decision-making, which guardianship orders allow, undermines the right to enjoy legal capacity on an equal basis with others.^{31,32} Far more needs to be done in Scotland to facilitate supported decision-making and comply with Article 12.³³

People with learning disabilities, cognitive impairments and autistic spectrum disorders are considered ‘people with a mental disorder’ under the Mental Health (Care and Treatment) Act (2003)

This leads to inappropriate treatment, or detention and denial of equal recognition before the law. Scottish Government has promised to review this but has set no timescale.

Presently, Advance Statements are not used as standard within Mental Health settings and are not well promoted or trusted

Scottish Government committed to promoting independent advocacy and advance statements, alongside a rights-based approach, in statutory guidance on the use of mental health legislation, by 2017.³⁴

³⁰ According to the Mental Welfare Commission, there was a 99% increase in the number of new welfare guardianship orders granted between 2009/10 and 2015/16; 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/>

³¹ The Adults with Incapacity (Scotland) Act (2000).

³² Article 12.3 of The UNCRPD: www.un.org/disabilities/convention/conventionfull.shtml

³³ The UN Committee’s General Comment makes significant observations relevant to compulsory detention and compulsory treatment:

“The denial of the legal capacity of persons with disabilities and their detention in institutions against their will, either without their consent or with the consent of a substitute decision-maker, is an ongoing problem. This practice constitutes arbitrary deprivation of liberty and violates articles 12 and 14 of the Convention.”

and

“Forced treatment by psychiatric and other health and medical professionals is a violation of the right to equal recognition before the law and an infringement of the rights to personal integrity (art. 17); freedom from torture (art. 15); and freedom from violence, exploitation and abuse (art. 16).” Article 12: Equal recognition before the law (Adopted 11 April 2014: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>)

³⁴ Scottish Government (2016) A fairer Scotland for disabled people: Our delivery plan to 2021 for the UNCRPD, p.14

Suggested question:

Can the State Party confirm when the Scottish Government will begin the promised review of the inclusion of people with learning disabilities, cognitive impairments or autistic spectrum disorders in the definition of people with a mental disorder in the Mental Health (Care and Treatment) Act 2003?

What steps will the state party take to ensure greater use of supported decision making and reduce instances of substitute decision making in relation to the Adults with Incapacity Act?

1.7. Article 13 – Access to Justice

Disabled people struggle to find disability specific legal services

In Scotland no legal services specialise in disability, and there are few pro-bono lawyers with disability expertise.³⁵

UK Government introduced fees for employment tribunals in July 2013

This resulted in a '46% year-on-year reduction' in disability cases'.³⁶ Scotland saw a 52% between 2012/13 and 2014/15.³⁷ Scottish Government committed to abolishing these fees by 2021.³⁸

Suggested question:

What plans does the state party have to increase disabled people's access to legal redress in Scotland? Please comment on employment discrimination in particular.

1.8. Article 14 – Liberty and Security of Person

Only 3 of 17 Scottish prisons have a specialist learning disability service

This is despite disabled prisoners [being] 'more likely to be placed in segregation, bullied, and subject to control and restraint procedures'.³⁹ The proportion of prisoners with mental health conditions is four times

³⁵ Compare this with England, where there are 11 disability law centres.

³⁶ Trade Union Congress (2014) At What Price Justice?

³⁷ Equality Bulletin, September 2015

³⁸ Scottish Government (2016) A fairer Scotland for disabled people: Our delivery plan to 2021 for UNCRPD

³⁹ ARC Scotland (2014) Powerpoint: Learning Disabled Offenders

higher than in the general population; and there are approximately 1,000 prisoners with a learning disability.⁴⁰

Suggested question:

Can the state party outline plans to ensure that people with mental health conditions or learning disabilities receive appropriate accommodation and support, including after offending?

Compulsory Treatment Orders under the Mental Health (Care and Treatment) (Scotland) Act 2003 rose 3% between 2015-16, and are at the highest level since the Act was implemented.⁴¹ Additionally, the rate of Mental Health Officer consent to emergency detention remains low at 44%, but has improved in certain health boards, e.g. Borders, Greater Glasgow and Clyde and Lanarkshire.⁴²

1.9. Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment.

People with learning disabilities or dementia continue to be subject to abuse within care settings.⁴³

Suggested question:

What steps is the state party taking to prevent and remedy the abuse of disabled people in residential settings and the community; and how is the state party working with the Care Inspectorate in Scotland to do this?

⁴⁰ ARC Scotland (2012) Supporting Offenders with Learning Disabilities in Scotland

⁴¹ Mental Welfare Commission (September 2016) Mental Health Act Monitoring 2015-16: http://www.mwcscot.org.uk/media/342871/mha_monitoring_report_to_omg_on_2_aug_2016_-_final_ab_19_sept_16_jw_26.09.pdf

⁴² http://www.mwcscot.org.uk/media/321062/edc_report_2016.pdf

⁴³ See recent examples reported in media: <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-37439153>

<http://www.thenational.scot/news/disabled-teenager-was-left-without-food-or-water-in-care-home-abuse.20187>

<https://www.sundaypost.com/news/scottish-news/scandal-of-rising-abuse-in-care-homes-with-more-than-1600-allegations-in-one-year/>

1.10. Article 16 – Freedom from exploitation, violence and abuse

Disability hate crime remains an everyday problem

It has been recorded in Scotland since 2009. There were 201 charges in 2015-16,⁴⁴ a 14% rise on 2014-15.⁴⁵ Accounting for under-reporting, the real rise is estimated at 41%.⁴⁶

Under-reporting partly stems from historic distrust of police amongst disabled people:

Police said there was no evidence that someone had broken in because he didn't take anything, I spoke to the sergeant and asked them to take me seriously.⁴⁷

Cultural change in the relationship between disabled people and police is necessary to ensure proper reporting.

Suggested question:

How will the state party encourage better reporting of disability hate crime?

1.11. Article 19 Living independently and being included in the community

UK Government is in contravention of Article 19 due to changes in housing benefits, eligibility criteria for Personal Independence Payment, and the closure of the UK Independent Living Fund.⁴⁸

One in seven people receiving social care in Scotland lost this between 2009-14, and local care delivery is patchy.⁴⁹ Under-resourcing has meant: unanticipated personnel change and lateness; lack of staff, time and skills; absence of a satisfactory complaints mechanism; and individuals being asked to give up support time to accommodate others with 'higher' need.⁵⁰ Uncertainty around support

⁴⁴ A 'charge' is a 'demand made to a person to pay a sum of money in, or comply with, an order of the court'

⁴⁵ <http://www.crownoffice.gov.uk/media-site/media-releases/1329-hate-crime-in-scotland-2015-16>

⁴⁶ <http://www.independent.co.uk/news/uk/hate-crime-against-disabled-people-rises-41-per-cent-in-one-year-a6713546.html>

⁴⁷ Focus Group: People First

⁴⁸ See here:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeCategoryID=7

⁴⁹ See Learning Disability Alliance (2014) report:

<http://www.ldascotland.org/docs/2014%20Eligibility%20Criteria%20Report%20final.pdf>

⁵⁰ Data from focus group, run by People First Scotland

provision is stressful and risks health and wellbeing. Scottish Government have committed to invest in social care and end 'time and task' provision.⁵¹

Additionally, disabled people do not receive enough information to make informed choices about social care.⁵²

People requiring community support services to achieve independent living are financially disadvantaged by social care costs.⁵³ Costs vary between local authority areas, creating geographic disadvantage.

Suggested question:

What plans does the state party have to increase social care investment?

Will the state party assess the cumulative impact of reductions in social care and social security funding?

There is no explicit right to independent living in Scottish law or policy. A process of integrating health and social care has begun. This has focused on 'health' at the expense of 'social care', undermining crucial tenets of independent living. Disabled people have largely been excluded from the planning process.⁵⁴

90,000 fewer disabled people are eligible for a 'standard' rate of care under the new disability benefit, Personal Independence Payment (PIP). In Scotland, 47,000 disabled people claiming Disability Living Allowance will lose Higher Rate mobility entitlement and, subsequently, entitlement to "passport" benefits, including Motability

⁵¹ Scottish Government (2016) A fairer Scotland for disabled people: Our delivery plan to 2021 for UNCRPD

⁵² The Social Care (Self-directed Support) (Scotland) Act 2013 came into force on 1st April 2014. It places a duty on local authority social work departments to offer people who are eligible for social care a range of choices around how they receive their social care and support. There are four main options from which people can choose – and they are delivered through a system called 'self-directed support'. See here for information: selfdirectedsupportscotland.org.uk/self-directed-support And see here for Scotland's definition of SDS: <http://www.selfdirectedsupportscotland.org.uk/self-directed-support>

⁵³ See here for an example:

http://www.heraldscotland.com/news/13411724.Councils_face_a_care_tax_crisis_as_14_500_are_unable_to_pay_social_and_personal_care_bills/

⁵⁴ This was a key finding from Inclusion Scotland's Routes to Inclusion project, funded by Scottish Government.

vehicles, Blue Badge parking and concessionary travel.⁵⁵ As a more rural part of the UK this is especially problematic in Scotland, with disabled people's rights under articles 20, 29 and 30 also being adversely impacted.

Suggested questions:

How will the state party ensure that passported benefit entitlements are maintained for people receiving new Scottish disability benefits?

Scottish Government established an Independent Living Fund (ILF)

The fund was set-up in the spirit of co-production with disabled people.

Suggested question:

Can the state party explain the funds allocated to the new ILF Scotland, and outline any future plans to increase the funding available?

1.12. Article 21 – Freedom of expression and opinion, and access to information

Disabled people continue to be denied information on equal terms with non-disabled people, negatively impacting political and civic participation and access to healthcare and other services. For people with learning disabilities it is '**surprising and unusual**' to get accessible information. While accessible information is usually available, this offer is made at the end of inaccessible original documents; or released significantly later than originals.⁵⁶

The BSL (Scotland) Act (2015) should improve the accessibility of information for Deaf people, but requires promotion and enforcement.⁵⁷ Deaf people continue to experience difficulty accessing BSL / English interpreters. In Scotland there are 51 registered interpreters, but over 6000 BSL users. Scottish Government's BSL National Plan is due to be launched in October 2017.

⁵⁵ Blue Badge scheme explained here: <http://www.transport.gov.scot/road/blue-badge-scheme>

⁵⁶ 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.

⁵⁷ See here for an online page where Deaf people share information and express views about the BSL (Scotland) Act (2015)

Suggested questions:

What steps has the state party taken to ensure that all disabled people have access to information as part of public service provision? ⁵⁸

How does the state party intend to promote the BSL (Scotland) Act (2015)?

1.13. Article 23 – Respect for home and the family

Implementation of supported parenting services in Scotland is patchy. This is worrying since out of 5,000 parents with learning disabilities in Scotland, between 40% and 60% have their children removed.⁵⁹ 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.⁶⁰ The Keys to Life strategy (2013) recommends that people with learning disabilities have access to supported parenting services.⁶¹

Suggested question:

Can the state party outline its plans to ensure that disabled parents receive proper support?

1.14. Article 24 – Education

The number of disabled children attending 'special schools' is rising. 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 2008.⁶² We note that '**If [disabled people] went to the same schools [they] would know and be known by other people**'. Support can be provided in mainstream settings, but continuing budget cuts make this inadequate and result in children being kept out of education for several months.^{63 64}

Educational outcomes for disabled children still lag behind those of non-disabled children. There is a particular problem for D/deaf school

⁵⁸ See here for Principles of Inclusive Communication, which we endorse: <http://www.gov.scot/Resource/Doc/357865/0120931.pdf>

⁵⁹ See here: <http://www.sclid.org.uk/evidence-and-research/commissioned-reports/supporting-parents/>

⁶⁰ <http://www.gov.scot/Topics/People/Young-People/gettingitright/what-is-girfec>

⁶¹ See here: <http://keystolife.info/>

⁶² See statistics here: <http://www.gov.scot/Publications/2015/12/7925>

⁶³ 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>

⁶⁴ <http://www.scotsman.com/news/politics/calls-for-councils-to-reverse-cuts-in-specialist-school-staff-1-4302747>

leavers - 16.2% leave 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.⁶⁵

Suggested question:

What plans does the state party have to ensure that disabled children are included in mainstream education?

1.15. Article 25 – Health

Disabled people continue to experience poorer access and outcomes in health. In particular, 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.⁶⁶ People with mental health conditions live on average 16-25 years less than the general population. Despite inequality in health outcomes, funding has reduced for mental health treatment and voluntary recovery services.

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.⁶⁷

Suggested Questions:

How will the state party ensure that mental health services are available at the point of need?

How will the state party ensure that citizens have food security and do not suffer impairment / further impairment as a result of poor food security?

⁶⁵ British Deaf Association (April 2015) *Attainment of school pupils with a sensory impairment*. Submission to the Scottish Parliament's Education and Culture Committee

⁶⁶ 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.

⁶⁷ 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/>

1.16. Article 26 – Habilitation and Rehabilitation

Transition out of education is problematic for young disabled people because care and support entitlements change when they leave school. Despite a strong lobby from disabled people’s organisations and disability organisations in Scotland, Scottish Government did not address this in the Children and Young People (Scotland) Act (2014).

During longer term hospital stays, disabled adults lose care and support entitlements. The process of reinstating them is lengthy and has detrimental health impacts.⁶⁸

Cuts to local recovery services, such as hydrotherapy pools, are losing funding.⁶⁹ This is an impact of austerity, which has serious implications for disabled people’s lives but is not reported on or highlighted.

Suggested question:

Could the state party outline its plans to ensure adequate local support provision for disabled people, including condition specific therapies?

1.17. Article 27 – Work and Employment

The employment rate for disabled people in Scotland remains at just over 41%, compared to 80.3% of non-disabled people.⁷⁰ For adults with learning disabilities only 13.9% are in employment, training or volunteering.⁷¹ Employability is a particular problem for the D/deaf community and those with mental health conditions. Only 20% of people with serious and long-term mental health problems are in paid employment.⁷² Scottish Government has committed to half the disability employment gap in Scotland by 2021.⁷³

⁶⁸ For information on the withdrawal of benefits during hospital stays see here:

<https://www.turn2us.org.uk/Benefit-guides/Going-into-Hospital-and-benefits/Benefits-that-stop-being-paid-if-you-go-into-hosp>

⁶⁹ See an example here: <http://www.edinburghnews.scotsman.com/news/health/nhs-to-pull-plug-on-therapy-baths-1-3924304>

We are concerned that this is illustrative of many cuts happening locally and somewhat ‘under the radar’, which impact on the daily lives and health management of disabled people.

⁷⁰ See here for latest labour market statistics for Scotland:

<http://www.gov.scot/Topics/Statistics/Browse/Labour-Market/AnalyticalPapers>

⁷¹ Scottish Consortium of Learning Disability (August 2015) Learning Disability Statistics Scotland, 2014: <http://www.sclcd.org.uk/wp-content/uploads/2015/08/Learning-Disability-Statistics-Scotland-2014-report.pdf>

⁷² <https://www.samh.org.uk/our-work/public-affairs/employment>

⁷³ Scottish Government (2016) *A Fairer Scotland for Disabled People: Our delivery plan to 2012 for the UNCRPD*

Employment barriers are not adequately addressed, which prevents many disabled people from working. The ‘Access to Work’ scheme (AtW) provides financial support for adjustments required in the workplace. Whilst Scotland has 11% of the overall disability benefit caseload, it receives only 6% of the Access to Work budget, and cannot meet demand. Additionally, the introduction of a cap on AtW accentuates existing problems. For example, people who need communication support such as BSL / English interpreters will struggle to fund this.⁷⁴ And small and medium sized enterprises will struggle further to finance adjustments.⁷⁵

Suggested question:

Could the state party outline its plans to address employment barriers for disabled people?

1.18. Article 28 – Adequate standard of living and social protection

Living standards for disabled people have declined. As a significant proportion of social security recipients, disabled people are disproportionately impacted by recent UK government policy, including increased social security conditionality.⁷⁶ For example, over one quarter of sanctions each year between 2010 and 2014 fell on disabled people.⁷⁷ Disabled people are mistrusted and treated inhumanely when assessed for Employment Support Allowance.⁷⁸

Scottish Government have consulted disabled people on the use of new devolved powers over disability benefits.^{79,80} A system based on dignity

⁷⁴ http://www.ndcs.org.uk/for_the_media/press_releases/statement_in_4.html

⁷⁵ More than words: Rethinking employment support for disabled jobseekers Matthew Oakley A WPI Economics report for ERSA October 2016

⁷⁶ This includes reduced or lost benefits when re-assessed for Personal Independence Payment, including the loss of Motability vehicles; losses of around £40 per week under Universal Credit for those able to work only part-time due to impairments or health conditions; reduced allowances (around £1,500 per year) for disabled children under UC; and simultaneous reductions in social care and Local Authority budget cuts.

⁷⁷ See Citizens Advice Scotland (2016) Learning from Testing Times:

http://www.cas.org.uk/system/files/publications/learning_from_testing_times_uc_report.pdf

⁷⁸ See recent UN investigation of the UK and comments on Employment Support Allowance (ESA) assessment www.ohchr.org/Documents/HRBodies/CRPD/CRPD.C.15.R.2.Rev.1-ENG.doc

⁷⁹ See Scottish Government (2015) Social Security for Scotland: Benefits being devolved to the Scottish Parliament: <http://www.gov.scot/Resource/0047/00473452.pdf>

⁸⁰ See here for information and documents: <https://consult.scotland.gov.uk/social-security/social-security-in-scotland>

and respect is promised, initiated by a Social Security bill in the first year of parliament.

Suggested questions

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

Can the state party outline plans in Scotland to ensure disabled people obtain CRPD article 28 rights?

There is a shortage of accessible homes in Scotland.

62,000 households require adapted baths / showers, but do not have them. 8,000 households require, but lack, ramp access, meaning that 17,042 wheelchair users lack suitable accommodation.^{81 82} Deaf people require visual entry systems, and are required to pay for these themselves. Overall 230,000 adapted homes are needed, the lack of which is **‘restricting disabled people’s lives ... and potentially leading to isolation, health problems, and a lack of confidence / self-esteem’**. 201,000 Scottish households cannot access essential facilities in their own home and could therefore be treated as homeless under the Housing (Scotland) Act 1987.^{83 84}

Homelessness persists for people with mental health conditions.⁸⁵

UK Government have capped Local Housing Allowance under Universal Credit.⁸⁶ For disabled tenants, this means an end to funding for the servicing of adaptations, and newly unaffordable tenancies. It also negatively impacts future investment in adapted housing.

Suggested questions:

Can the State Party outline plans in Scotland to address the current shortfall in the supply of accessible housing?

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

⁸¹ <http://www.gov.scot/Publications/2014/12/6903/0>

⁸² <http://horizonhousing.org/static-content-wysiwyg-downloads/Horizon-Housing-Mind-the-step-report.pdf>

⁸³ See Scottish House Condition Survey 2012

⁸⁴ 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

⁸⁵ Voices of eXperience focus group.

⁸⁶ Details clearly explained here: <http://www.insidehousing.co.uk/hb-for-social-tenants-to-be-capped-at-lha-rates/7012918.article>

1.19. Article 29 – Participation in political and public life

Short deadlines during political consultation and the late issue of key information in Easy Read makes it difficult for disabled people to engage on the same terms as non-disabled people.⁸⁷

Scotland's Access to Elected Office Fund was launched (2016), covering additional costs for disabled people standing for selection or election in Scotland's 2017 local government elections.⁸⁸

Suggested questions:

Given that disabled people represent 20% of the population, how will the state party ensure that this is reflected throughout its political institutions?

Only 12.7% of public appointments are currently held by disabled people.⁸⁹ In 2008 the Scottish Government set a target to have 15% of all public appointments held by disabled people.⁹⁰ No timescale was provided.

1.20. Article 30 – Participation in cultural life, recreation, leisure and sport

Community clubs and resources are losing funding, impacting disabled people's participation. This includes mental health services, where users report the closure of drop-in centres.⁹¹ Additionally, those with mental health problems report on-going exclusion from the wider community.

1.21. Article 31 – Statistics and data collection

The following data is needed:

- Incidence of hate crime with multiple aggravations - i.e. LGBTQI+ identity and disability.

⁸⁷ 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.

⁸⁸ See here for announcement and details: <http://news.scotland.gov.uk/News/Democratic-participation-fund-for-disabled-people-22c8.aspx>

⁸⁹ <http://www.appointed-for-scotland.org/about-public-bodies/diversity/>

⁹⁰ 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>

⁹¹ Voices of eXperience focus group

- Up-to-date, intersectional employment statistics - i.e. a breakdown by both disability and gender.
- The number of disabled women accessing abortion services in Scotland.

Suggested Question:

What steps has the state party taken to collect statistical data about disabled people, disaggregated by gender, age, sexuality, religion or belief, and impairment type; and what indicators are used to assess the impact of public policies which may advance implementation of the Convention?

1.22. Article 33 – National implementation and monitoring

Scottish Government's launched its UNCRPD Delivery plan to 2021, on 2nd December 2016. It sets a positive direction of travel towards a fairer Scotland for disabled people, based on a firm foundation of human rights. However, the challenge will be transforming ambitions into actions that will concretely impact disabled people's lives.

Suggested question:

Could the state party outline key areas of progress for Scottish Government since the launch of its CRPD delivery plan on 02 December 2016?

Annex 1: Recommendations to the Scottish Government on its implementation of the United Nations Convention on the Rights of Persons with Disabilities

This accompanies Draft 1 of the UNCRPD supplementary report from Scotland, submitted on 14 December 2016.

Article 5

We recommend that the UK Government:

1. Implements section 14 of the Equality Act 2010, concerning dual discrimination.

Articles 6 and 28

We recommend that the Scottish Government:

1. Ensures that disabled women are protected from potential harm as a result of unequal access to household resources, which is serious risk under Universal Credit 'one household' payments.⁹²

Article 8

We recommend that the Scottish Government:

2. Increases public awareness of disability through campaign activities and consistent use of social model language in public policy.

Article 9

We recommend that the Scottish Government:

3. Reviews the accessibility of information and services for Deaf people, including Child and Adolescent Mental Health Services, which must be an integral component in the forthcoming BSL National Action Plan (October 2017).

⁹² We support the rationale set out by Engender here: <https://www.engender.org.uk/content/publications/Gender-matters-in-social-security---individual-payments-of-universal-credit.pdf>

4. Ensures that new public spaces or projects and buildings are accessible, and facilitates the meaningful involvement of disabled people at the design stage.
5. Taking a rights based approach, promotes disability equalities training for all transport providers.

We recommend that the UK Government:

6. Reminds local authorities of their obligations under the Equality Act 2010 to have due regard to equality between disabled and non-disabled people.
7. Ensure that all new public transport infrastructure meets the highest standards of accessibility and universal design, including the strict enforcement of deadlines to replace non-compliant vehicles.
8. Consider rolling out the accessible information standard across public services.

Articles 9 and 28

We recommend that the Scottish Government:

9. Takes urgent action to address the shortage of accessible homes.

We recommend that the UK Government:

10. Develop measures, including policy commitments, to increase the supply and availability of accessible housing.

Article 12

We recommend that the Scottish Government:

11. Urgently sets a date for the promised review of the inclusion of people with learning disabilities, cognitive impairments and autistic spectrum disorders in the definition of people with a mental disorder in the Mental Health (Care and Treatment) Act 2003.
12. Invests in supported decision making, recognising this as a key mechanism for the delivery of UNCRPD Article 12 rights, and reduce the number of guardianship orders taken out under the Adults with Incapacity (Scotland) Act 2000.

Article 13

We recommend that the Scottish Government:

13. Invests in a disability law centre or hub for Scotland.

Article 14

We recommend that the Scottish Government:

14. Carries out an independent review on the compatibility of Scotland's mental health legislation with the UNCRPD, particularly Article 14.

We recommend that the UK Government:

16. Carries out an urgent review of Community Treatment Orders.

17. With the full involvement of disabled people, develop options for reform or replacement of both the Mental Health Act and the Mental Capacity Act to ensure that new legislation complies with the UNCRPD. As a minimum revised or new legislation should:

17.1. De-link any permission of compulsory detention or treatment from a 'diagnostic threshold' related to disability. This will require consideration of how at the same time to maintain compliance with the European Convention on Human Rights.

17.2. Ensure that safeguards prioritise respect for the will and preferences of the person.

Articles 16 and 31

We recommend that the Scottish Government:

18. Collects hate crime statistics aggregated by intersectional identities – i.e. disability and gender; disability and sexuality etc.

Article 19

We recommend that the Scottish Government:

19. Urgently reviews the resourcing of Self-Directed Support and increase investment to ensure a consistent and quality standard of delivery across the country.

20. Includes a statutory right to live independently and be included in the community – as per UNCRPD Article 19 - in national legislation.

21. Ensures that performance targets for health care support and social care support reflect the distinction and the value of social care support in delivering UNCRPD article 19 rights.

We recommend that the UK Government:

22. Takes concrete action to implement the recommendations of the CRPD Committee's Inquiry into the United Kingdom under Article 6 of the Optional Protocol to the Convention, published 7 November 2016.

23. Establishes a statutory right to independent living in relevant domestic law.

Articles 21 and 29

We recommend that the Scottish Government:

24. Commits to producing key information in accessible formats at the same time as the original documents.

Article 27

We recommend that the Scottish Government:

25. Outlines concrete measures to halve the disability employment gap by 2021.

26. Collects detailed annual statistics on the employment of disabled people, including disabled women.

We recommend that the UK Government:

27. Mitigates the reduction in spending on specialist employment support, including as it impacts on funding for employability support in Scotland.

28. Sets concrete milestones towards the target to halve the disability employment gap, with a clear strategy for how this will be achieved, paying particular attention to the employment rates of people with learning disabilities and mental health problems.

29. Mitigates the impact on the jobs and employment prospects of disabled people for whom the cost of support exceeds the upper-limit on Access to Work awards.

Article 28

We recommend that the UK Government:

30. Re-instates the 'work related activity' payment within Employment Support Allowance.

Annex 2: Endorsements

This report has been endorsed by the following civil society organisations in Scotland:

