

# Progress on disability rights in the United Kingdom

UK Independent Mechanism  
update report to the UN Committee  
on the Rights of Persons with  
Disabilities

October 2018

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## List of acronyms

ADASS – Association of Directors of Adult Social Services

BSA – British Social Attitudes Survey

BSL – British Sign Language

CCG – Clinical Commissioning Group

CLA – Civil Legal Advice

COPFS – Crown Office and Procurator Fiscal Service (Scotland)

CQC – Care Quality Commission

CRPD Committee – UN Committee on the Rights of Persons with Disabilities

DHSC – Department of Health and Social Care

DLA – Disability Living Allowance

DPO – Disabled people's organisation

DWP – Department for Work and Pensions

EA – Equality Act

ECHR – European Convention on Human Rights

ECNI – Equality Commission for Northern Ireland

EDP – Enhanced Disability Premium

EHRC – Equality and Human Rights Commission

EHRiC – Scottish Parliament Equalities and Human Rights Committee

ESA – Employment Support Allowance

EU – European Union

GB – Great Britain

HRA – Human Rights Act 1998

IFS – Institute for Fiscal Studies

IMNI – Independent Mechanism for Northern Ireland (consists of ECNI and NIHRC)

JRF – Joseph Rowntree Foundation

LASPO – Legal Aid, Sentencing and Punishment of Offenders Act 2012

LGA – Local Government Association

MHA – Mental Health Act 1983

NHRI – National Human Rights Institution

NHS – National Health Service

NI – Northern Ireland

NIHRC – Northern Ireland Human Rights Commission

ODI – Office for Disability Issues

ONS – Office for National Statistics

PIP – Personal Independence Payment

PSED – Public Sector Equality Duty

SDGs – Sustainable Development Goals

SDP – Severe Disability Premium

SHRC – Scottish Human Rights Commission

TUC – Trades Union Congress

UC – Universal Credit

UK – United Kingdom

UKIM – United Kingdom Independent Mechanism (consists of the ECNI, EHRC, NIHRC and SHRC)

UN – United Nations

UN CRPD – UN Convention on the Rights of Persons with Disabilities

WCA – Work Capability Assessment

## Executive summary

In August 2017, the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) examined the extent to which the UK and devolved governments are in compliance with the Convention on the Rights of Persons with Disabilities (UN CRPD). The CRPD Committee's main concerns and recommendations to the UK governments are set out in its 'concluding observations'.<sup>1</sup> The CRPD Committee requested information from the UK one year on from the examination of the steps taken to implement its recommendations on: independent living; work and employment; and an adequate standard of living and social protection; as well as some related issues covered in the report on the CRPD Committee's 2016 inquiry.<sup>2</sup>

This report provides the independent view of the UK Independent Mechanism (UKIM) on the steps taken by the UK governments to implement these recommendations since August 2017.

One year on from the CRPD Committee's examination of the UK's record on the rights of disabled people, some progress has been made, such as the:

- independent review of the Mental Health Act 1983
- increase in the number of disabled people in employment and slight decrease of the disability employment gap; and government initiatives to further improve disabled people's access to employment across the UK
- significant increase of the Access to Work payment cap
- proposals to introduce targets for the number of disabled people employed in the public sector in Scotland
- outworking of the time-limited welfare reform mitigations strategy in Northern Ireland
- Welsh Government's Supporting People programme, and

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<sup>1</sup> CRPD Committee (2017), '[Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#)', CRPD/C/GBR/CO/1 [accessed: 16 July 2018].

<sup>2</sup> CRPD Committee (2017), '[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](#)'; UK Government (2017), '[Observations by the United Kingdom of Great Britain and Northern Ireland on the report of the Committee on its inquiry carried out under article 6 of the Optional Protocol](#)' [both accessed: 6 August 2018].

- proposed measures to tackle online hate speech, harassment and abuse in the UK.

However, the UK has taken only limited steps to address the concerns and recommendations of the CRPD Committee. UKIM is disappointed that the UK governments have not seized on this important opportunity to reflect on and progress disability rights. We are concerned by the lack of a prompt response to the CRPD Committee's recommendations. In particular, 12 months on, there is no comprehensive UK-wide strategy demonstrating how the UK will implement the CRPD Committee's recommendations. There has also been continued reluctance from the UK Government to accept the conclusions of the CRPD Committee's inquiry report on the impact of the UK Government's policies on the rights of disabled people.

We welcome the announcement in May 2018 that the UK Government is establishing a new Inter-Ministerial Group on Disability and Society. This is a positive step, which could tackle the current lack of leadership and momentum. However, the published terms of reference for the inter-ministerial group do not refer to the CRPD or the CRPD Committee's recommendations and do not specifically provide for the effective participation and involvement of disabled people's organisations or disabled people; and also it is not clear if, and to what extent, devolved administrations are involved in the group.<sup>3</sup>

In the meantime, the picture emerging from the most recent evidence about disabled people's lives remains deeply concerning. Disabled people across the UK continue to face serious regression of many of their rights, as presented in this report. Social protections have been reduced and disabled people and their families continue to be some of the hardest hit. More and more disabled people are finding it difficult to live independently and be included, and participate, in their communities on an equal basis.

There are fears that the significant uncertainty in relation to Brexit will lead to a further deterioration of disabled people's rights. The lack of a devolved government in Northern Ireland is also a specific concern to that jurisdiction, because it is significantly inhibiting the relevant departments from taking the required steps.

Without a clear and coordinated plan for how the UK and devolved governments will address the UN recommendations systematically, the limited steps taken so far are unlikely to be enough to address the concerns raised by the CRPD Committee.

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<sup>3</sup> Office for Disability Issues (2018). [The Inter-Ministerial Group on Disability and Society](#). Available [online](#) [accessed: 15 August 2018].

# 1. Introduction

This submission has been produced by the United Kingdom Independent Mechanism (UKIM). The UK Government designated the Equality and Human Rights Commission (EHRC), the Equality Commission for Northern Ireland (ECNI), the Northern Ireland Human Rights Commission (NIHRC) and the Scottish Human Rights Commission (SHRC) as UKIM under article 33 of the Convention on the Rights of Persons with Disabilities (CRPD).

## How to read this report

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This submission provides information about the measures taken by the UK governments to implement the CRPD Committee's recommendations, included in its concluding observations (August 2017)<sup>4</sup> and its inquiry report (October 2016)<sup>5</sup>, on the following issues:

- living independently and being included in the community (chapter 2)
- adequate standard of living and social protection (chapter 3)
- work and employment (chapter 4)
- prejudice and negative attitudes (chapter 5)
- access to justice (chapter 6)
- involving disabled people and their organisations (chapter 7), and
- dissemination of the concluding observations (chapter 8).

The information provided has been arranged thematically to provide an update on progress in the last 12 months. In each chapter, we set out a brief summary of progress, outline UKIM's key concerns in relation to the specific recommendation(s), present new evidence and outline any relevant steps taken by the UK governments.

At the end of this report, we reiterate UKIM's recommendations made to the CRPD Committee during the examination process in August 2017. Where necessary, these

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<sup>4</sup> CRPD Committee (2017), see note 1.

<sup>5</sup> CRPD Committee (2017), see note 2.

recommendations have been updated to reflect changes in the policy context and the emergence of new evidence. For convenience, they are set out in annex I, with updates highlighted.

Each section of the report refers to the CRPD Committee's relevant recommendations – either from the 2017 concluding observations and/or from the 2016 inquiry report. The full set of the Committee's recommendations is provided in annex II.

## Terminology

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

## Key developments since August 2017

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There has been little progress in the 12 months since the CRPD Committee's examination of disabled people's rights in the UK. UKIM has found an overall lack of momentum and leadership from the UK governments to promptly address the UN recommendations.

Meanwhile, disabled people across the UK continue to face serious regression of their rights to an adequate standard of living and social protection, and to live independently and be included in the community. UKIM reiterates its view that the grave and systematic violations identified by the CRPD Committee need to be addressed and that the overall approach of the UK Government towards social security protection requires an overhaul, guided by human rights standards and principles, to ensure disabled people's rights are respected, protected and fulfilled.<sup>6</sup>

Key developments include:

- The UK Government established an Inter-Ministerial Group on Disability and Society in 2018. However, the published terms of reference for the inter-ministerial group do not refer to the CRPD or the CRPD Committee's

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<sup>6</sup> See also UKIM (2018), '[Overview of key concerns about social security reforms and protecting disability rights in the United Kingdom](#)' [accessed: 16 July 2018].

recommendations and do not specifically provide for the effective participation and involvement of disabled people's organisations or disabled people, and it is not clear if, and to what extent, devolved administrations are involved in the group.<sup>7</sup>

- In July 2018, the Secretary of State for International Development hosted the Global Disability Summit, with representatives from disabled people's organisations, civil society, governments, and the private sector. The UK Government presented its new Charter for Change, which sets out 10 commitments to achieve full inclusion of disabled people.<sup>8</sup> Although the UK Government has repeatedly reiterated its commitment to making the CRPD a reality for all disabled people in the UK, and has claimed to be a global leader in disability rights,<sup>9</sup> it has not incorporated CRPD rights into domestic law,<sup>10</sup> or taken steps to implement disabled people's rights systematically across the UK.
- Following the European Union (EU) referendum in June 2016, there continues to be significant uncertainty regarding the future applicability of existing human rights protections in the UK that derive from EU law. The EU Charter of Fundamental Rights was excluded from the European Union (Withdrawal) Act 2018, meaning that from 'exit day' it will no longer apply in domestic law. As a result, domestic protections are more vulnerable to repeal. The Charter goes further than the non-discrimination provisions in the Equality Act 2010 or the European Convention on Human Rights (ECHR). Article 26 of the Charter, in particular, is a useful interpretive tool to support disabled people's right to independence and integration and participation in the community.
- The European Union (Withdrawal) Act 2018 also leaves human rights protections at risk of being changed through the use of wide-ranging delegated powers. This means that changes to fundamental rights currently protected by EU law can be made by ministers through secondary legislation without being subject to full parliamentary scrutiny.
- The EU is itself a party to the CRPD. Under EU law, international treaties to which the EU is party have a different status than they do under UK law. For example, EU law (unlike UK law) must be interpreted consistently with the CRPD. To ensure there is no regression, and that disabled people in the UK benefit from future progress driven by the CRPD, the UK Government should ensure these

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<sup>7</sup> Office for Disability Issues (2018), '[The Inter-Ministerial Group on Disability and Society](#)' [accessed: 15 August 2018].

<sup>8</sup> UK Government (2018), '[Global Disability Summit – Charter for Change](#)' [accessed: 3 August 2018].

<sup>9</sup> UK Parliament (November 2017), '[UN Committee on the Rights of Persons with Disabilities](#)', House of Commons Hansard, volume 631 [accessed: 28 August 2018].

<sup>10</sup> UK Parliament (2018), '[UN Convention on the Rights of Persons with Disabilities: Written question – HL9621](#)' [accessed: 3 August 2018].

protections are incorporated into UK law, for example by giving enhanced status to the CRPD.

- The uncertainty in Northern Ireland caused by the collapse of the devolved government (Northern Ireland Assembly and Northern Ireland Executive) continues. Consequently, there has been no formal response to the CRPD Committee's concluding observations falling within devolved competence. In the absence of ministers to provide approval, the relevant devolved departments have reported difficulties in obtaining the authority and resources to action the steps required to implement the CRPD Committee's recommendations.
- The Scottish Government has also made no formal response to the CRPD Committee's concluding observations falling within its devolved competence. However, the Scottish Government has set up an expert advisory group to make recommendations on 'how Scotland can continue to lead by example in human rights, including economic, social, cultural and environmental rights'. The group will make recommendations to the First Minister before the end of December 2018.<sup>11</sup>

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<sup>11</sup> Scottish Government (2018), '[First Minister's Advisory Group on Human Rights Leadership: terms of reference](#)' [accessed: 7 August 2018].

## 2. The right to live independently in the community (article 19)

### **CRPD Committee concluding observations 2017, paragraph 45:**

‘The Committee recommends that the State party ... : recognize the right to living independently and being included in the community as a subjective right, recognize the enforceability of all its elements, and adopt rights-based policies, regulations and guidelines to ensure implementation; conduct periodic assessments in close consultation with organizations of persons with disabilities to address and prevent the negative effects of policy reforms through sufficiently funded and appropriate strategies in the area of social support and living independently; ... [and] allocate sufficient resources to ensure that support services are available, accessible, affordable, acceptable, adaptable and are sensitive to different living conditions for all persons with disabilities in urban and rural areas.’

### **Summary of progress**

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There has been limited progress on the UK governments’ implementation of the CRPD Committee’s recommendations concerning disabled people’s right to live independently in the community. Appropriate social care packages and accessible housing are two of the cornerstones of independent living. There have been some promising developments in Scotland and Wales in relation to certain funding streams to support independent living. However, as set out below, there is also evidence that social care, particularly adult social care, is at crisis point across the UK and there is a chronic shortage of accessible homes.

## Key concerns

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### UK

The right to live independently in the community is not recognised as a statutory right in the UK and there do not appear to be any plans to change this.

The increasing demand, along with reduced funding, for social care, particularly adult social care, may be leading to a regression in disabled people's article 19 rights to live independently in the community.<sup>12</sup> The shortage of accessible and adaptable homes, and long delays in making existing homes accessible, also has a detrimental effect on the right to live independently.<sup>13</sup>

### England

The EHRC is concerned that, in England, the closure of the Independent Living Fund and the devolution of this function to local authorities, without ring-fencing finance for this purpose, has resulted in a postcode lottery for support.<sup>14</sup>

### Wales

The EHRC is concerned that disabled people's right to independent living may be harmed by the Welsh Government's decision to potentially merge the Supporting People programme with other budget lines from 2020.<sup>15</sup>

Concerns have been raised that disabled people's rights have been negatively affected when equivalent funding programmes elsewhere in the UK have been lost.

### Northern Ireland

The Mental Capacity Act (Northern Ireland) 2016, while enacted, continues to have no clear timeframe for its commencement.

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<sup>12</sup> UK Independent Mechanism (July 2017), '[Disability rights in the UK: updated submission to the UN Committee on the Rights of Persons with Disabilities](#)', p. 7 [accessed: 6 July 2018].

<sup>13</sup> Equality and Human Rights Commission (2018), '[Housing and disabled people: Britain's hidden crisis](#)' [accessed: 6 July 2018].

<sup>14</sup> UKIM (July 2017), p. 52, see note 12.

<sup>15</sup> Welsh Government (July 2018), '[Supporting People programme](#)' [accessed: 27 August 2018].

In Northern Ireland, the Independent Living Fund is administered by the Independent Living Fund Scotland, but restricted to existing users leading to its eventual de facto closure, and with no clear indication of future arrangements.<sup>16</sup>

## Scotland

Despite positive policy intentions, significant questions remain regarding the implementation of Self-directed Support and access to adult social care.<sup>17</sup>

## New evidence

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### Great Britain

The EHRC's inquiry into housing for disabled people across Great Britain (GB), published in May 2018, found that disabled people face a shortage of accessible and adaptable homes and long delays in making existing homes accessible.<sup>18</sup> Disabled people are not getting the support they need to live independently as the provision of advice, support and advocacy is patchy, and people report that they have nowhere to turn when their housing is unsuitable. The EHRC's survey of local authorities found that just over a quarter (28%) of local authorities in GB set a percentage target for accessible housing.<sup>19</sup>

- In England, only 7% of homes offer minimal accessibility features.<sup>20</sup>
- In Scotland, 55% of councils said a lack of funding for adaptations was a challenge, and only 24% said the data they hold about disabled people's housing requirements were 'good' or 'very good'.
- In Wales, only 5% of local authorities have a target in place for accessible housing, and only 15% said that disabled people's housing needs are subject to specific discussion or scrutiny when conducting a local housing market assessment.

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<sup>16</sup> UKIM (February 2017), '[Disability rights in the UK: submission to inform the CRPD List of Issues on the UK](#)', pp. 26–7 [accessed: 27 August 2018].

<sup>17</sup> UKIM (July 2017), p. 55, see note 12.

<sup>18</sup> EHRC (2018), see note 13; EHRC (2018), '[Consultation response: Integrated Communities Strategy green paper](#)' [accessed: 6 July 2018].

<sup>19</sup> EHRC (2018), '[Housing and disabled people: the role of local authorities](#)' [accessed: 12 September 2018].

<sup>20</sup> EHRC (2018), see note 13.

## England

Spending for adult social care in England was budgeted to be 3% lower in 2017/18 than in 2009/10.<sup>21</sup> As the population has grown over this period, this is equivalent to 9% lower per person, according to the Association of Directors of Adult Social Services (ADASS). This means ‘fewer older and disabled people with more complex care and support needs getting less long-term care’.<sup>22</sup>

In March 2018, the EHRC started legal action against 13 clinical commissioning groups<sup>23</sup> because their NHS Continuing Healthcare policies restricted funding and failed to account for individual circumstances. This may force disabled people into residential care when their preference is to remain at home.<sup>24 25</sup>

Research by the Care Quality Commission (CQC) found that nearly two-thirds of placements in residential-based mental health rehabilitation services are ‘out of area’, and very lengthy.<sup>26</sup> This means that individuals are usually placed far away both from home and from the local support services that should care for them once they have been discharged.<sup>27</sup> The CQC has also reported that some patients who are subject to the Mental Health Act (MHA) 1983 continue to experience care that does not fully protect their rights or ensure their wellbeing. For example, there have been no improvements in involving patients in developing their care plans, and in making sure their views are considered in care decisions.<sup>28</sup>

## Northern Ireland

There is an absence of information on the extent to which disabled people with substantive needs, who are not existing Independent Living Fund users, are having

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<sup>21</sup> Association of Directors of Adult Social Services (2018), ‘[ADASS budget survey 2018](#)’ [accessed: 6 July 2018]; Institute for Fiscal Studies (2018), ‘[Changes in councils’ adult social care and overall service spending in England, 2009–10 to 2017–18](#)’; Institute for Fiscal Studies (2018), ‘[Adult social care funding: a local or national responsibility?](#)’ [both accessed: 6 July 2018].

<sup>22</sup> ADASS (2018), see note 21.

<sup>23</sup> Clinical commissioning groups (CCGs) are clinically led statutory NHS bodies responsible for the planning and commissioning of healthcare services for their local area.

<sup>24</sup> NHS Continuing Healthcare is a package of ongoing care arranged and funded solely by the NHS when an adult has been found to have a ‘primary health need’ as set out in the NHS guidance. Such care is provided to meet needs that have arisen as a result of disability, accident or illness. See ‘[National framework for NHS continuing healthcare and NHS-funded nursing care](#)’ for more information [accessed: 6 July 2018].

<sup>25</sup> All 13 CCGs EHRC started legal action against, and a further 16 whose policies it assessed as being unlawful for similar reasons, have agreed to review their policies. The EHRC will assess the reviewed policies and continue to monitor NHS Continuing Healthcare.

<sup>26</sup> The median length of stay on the ward was 323 days but the patients had been in some form of mental health hospital continuously for more than twice as long (median of 683 days).

<sup>27</sup> Care Quality Commission (2018), ‘[Mental health rehabilitation inpatient services](#)’ [accessed: 2 August 2018].

<sup>28</sup> Care Quality Commission (2018), ‘[Monitoring the Mental Health Act in 2016/17](#)’ [accessed: 2 August 2018].

their needs met through the Self-directed Support and direct payment provisions. Furthermore, direct payments do not fund many of the activities funded by the Independent Living Fund, leading to less support and control.<sup>29</sup>

Indicator 42 of the draft 'programme for government' considers the average life satisfaction score of disabled people.<sup>30</sup> The Department for Communities has acknowledged that the comprehensive disaggregated data required to support indicator 42 is lacking. The department has conducted a scoping study to identify existing data, which recommended that a new Northern Ireland disability survey is required. The department is exploring options for such a survey, but, due to the additional resources required to conduct the survey, ministerial approval is required. With the continued suspension of the Northern Ireland devolved government, it is currently not possible to obtain the required approval.

## Relevant steps taken by UK governments

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### England

Since 2015, the UK Government has allocated additional funding to local authorities for adult social care<sup>31</sup> through the adult social care precept, the Better Care Fund and a commitment to fund an adult social care support grant.<sup>32</sup> However, stakeholders, including ADASS, conclude that even these recent increases may not be enough to address the funding crisis in adult social care.<sup>33</sup>

In March 2017, the Conservative Government announced a green paper on social care in England, and a public consultation. The publication of the green paper, which will focus on older people, has been delayed until the end of 2018.<sup>34</sup> It is unclear

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<sup>29</sup> Independent Mechanism for Northern Ireland (2017), '[Jurisdictional "parallel" report on implementation in Northern Ireland](#)', p. 42 [accessed: 28 August 2018].

<sup>30</sup> Northern Ireland Executive (2017), '[Programme for government, delivery plan: indicator 42](#)' [accessed: 28 August 2018].

<sup>31</sup> Secretary of State for Housing, Communities and Local Government (2018), '[Final local government finance settlement 2018 to 2019: written statement](#)' [accessed: 2 August 2018].

<sup>32</sup> See '[Adult Social Care Funding \(England\)](#)' for more information about the adult social care precept, the Better Care Fund; the ASC support grant [accessed: 2 August 2018].

<sup>33</sup> ADASS (2018), see note 21.

<sup>34</sup> Jarret, T. (2018), '[Social care: forthcoming green paper on older people and parallel programme \(England\)](#)'. House of Commons Library [accessed: 6 July 2018].

whether it will address issues that are faced by working-age disabled people in relation to social care, and whether disabled people will be explicitly consulted.<sup>35</sup>

## England and Wales

The independent review of the MHA 1983<sup>36</sup> published its interim report in May 2018, providing details of the issues the review is examining.<sup>37</sup> These include the rising rates of people being detained under the act and inappropriate and/or long-term placement of people with learning disabilities and/or autism in psychiatric hospitals because community support services are unable to meet their needs. The EHRC hopes that the review will make recommendations that result in fewer people facing compulsory detention and more people living independently in places or with people of their choosing.

## Wales

The Welsh Government has prioritised social care in budget allocations to local authorities since 2010, most recently through a local government settlement to maintain the assumed Welsh Government share of core spending at 2017/18 levels until 2020. The Welsh Government also provides funding that supports social care duties through the Supporting People programme. This support helps people to live independently in their own home. The programme has been retained for a further two years as part of the budget for 2018/19. The programme's future post-2019 is unclear, with the Welsh Government potentially merging it with nine other budget lines, with no ring fencing, causing concern for disabled people. A £60 million integrated care fund has been introduced, which aims to support people to maintain their independence and remain in their own home. However, there has been a real terms reduction in budgets for social care services of over 12% due to increasing need.<sup>38</sup>

The Welsh Government is currently reviewing its Framework for Action on Independent Living.<sup>39</sup> After a delay, it is anticipated that the new framework,

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<sup>35</sup> The UK Government stated that 'a parallel process' would examine social care for working-age people, but no further detail has been published to date. See '[Social care: forthcoming Green Paper on older people and parallel programme \(England\)](#)' for more information [accessed: 17 August 2018].

<sup>36</sup> The Mental Health Act review recommendations will apply to England. They will also apply to Wales, but only in relation to non-devolved matters.

<sup>37</sup> Department of Health and Social Care (2018), '[Independent review of the Mental Health Act: interim report](#)' [accessed: 6 July 2018].

<sup>38</sup> Luchinskaya, D., Ogle J. and Trickey M. (2017), '[A delicate balance? Health and social care spending in Wales](#)' [accessed: 16 July 2018].

<sup>39</sup> Welsh Government (2013), '[Framework for action on independent living](#)' [accessed: 15 August 2018].

provisionally entitled 'Action on disability: The right to independent living', will now be published in autumn 2018. The new framework will be accompanied by an action plan that will set out a range of actions aimed at tackling some of the key barriers identified by disabled people, including in transport, employment and housing, and access to buildings and public spaces.

## **Northern Ireland**

The draft programme for government indicator 42<sup>40</sup> includes a commitment to increase take-up of Self-directed Support and direct payments. However, a final plan has yet to be approved in the absence of a functioning Northern Ireland Executive. Concerns have been raised that Self-directed Support does not suit everyone, that too much control is given to the health trusts, and that the support given is not enough to be used for more than the individual recipient's basic needs.<sup>41</sup>

In the absence of an approved programme for government, the Northern Ireland Executive Office has developed a 2018/19 outcomes delivery plan that reflects the responsibilities placed on departments by the previous NI Assembly and Northern Ireland Executive, and sets out actions that the departments can take without further ministerial approval.<sup>42</sup> Outcomes 8 (care and help for those in need) and 9 (a shared, welcoming and confident society that respects diversity) include a commitment to improve quality of life for disabled people. The identified actions for fulfilling these outcomes include ensuring that 8% of new social homes are wheelchair accessible, introducing opportunities for 200 new NI athletes in the Special Olympics, and improving understanding of British Sign Language and Irish Sign Language. Progress will be measured every six months, using a number of indicators set out in the draft programme for government, including indicator 42. Questions have been raised in particular regarding the plans for new accessible social homes and whether an 8% target for new accessible social homes is reflective of demand.<sup>43</sup> It has also been questioned whether the new accessible social homes will be provided in a way that addresses the demand in rural and urban areas.<sup>44</sup>

## **Scotland**

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<sup>40</sup> Northern Ireland Executive (2017), see note 30.

<sup>41</sup> UN CRPD Independent Mechanism for NI stakeholder roundtable, 10 September 2018.

<sup>42</sup> Northern Ireland Executive Office (2018), '[Outcomes delivery plan 2018/19](#)' [accessed: 5 September 2018].

<sup>43</sup> UN CRPD Independent Mechanism for NI stakeholder roundtable, 10 September 2018.

<sup>44</sup> UN CRPD Independent Mechanism for NI stakeholder roundtable, 10 September 2018.

The Scottish Government has announced funding for 31 projects delivering direct and local independent support across 31 local authority areas, through the Support in the Right Direction 2021 programme. Funding will be provided between October 2018 and March 2021, with the aim of ensuring that more people across Scotland who require social care are empowered to make choices about their support.<sup>45</sup>

The Scottish Government has confirmed that by 1 April 2019 it will extend free personal care<sup>46</sup> to all those under the age of 65 who require it, regardless of their condition.<sup>47</sup>

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<sup>45</sup> Self-directed Support (2018), '[Support in the Right Direction 2021 projects](#)', Scottish Government [accessed: 28 August 2018].

<sup>46</sup> The definition of personal care is set out in section 2(28) of the Regulation of Care (Scotland) Act 2001 and includes 'care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash', and it includes personal support.

<sup>47</sup> Scottish Government (July 2018), '[Implementation for free personal care for under-65s](#)' [accessed: 14 September 2018].

### 3. The right to an adequate standard of living and social protection (article 28)

#### **CRPD Committee concluding observations 2017, paragraph 59:**

‘The Committee recommends that the State party ... introduce, adopt and implement legislative frameworks to ensure that social protection policies and programmes across the State party secure income levels for all persons with disabilities and their families, by taking into account the additional costs relating to disability ... ; carry out a cumulative impact assessment, based on disaggregated data, of the recent and forthcoming reforms of the social protection system for persons with disabilities, and in close collaboration with organizations of persons with disabilities define, implement and monitor measures to tackle retrogression in their standard of living and use the cumulative impact assessment as a basis for policy development across the State party; ... [and] conduct a review of the conditionality and sanction regimes concerning the Employment and Support Allowance, and tackle the negative consequences on the mental health and situation of persons with disabilities.’

#### **Summary of progress**

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There have been a considerable number of research projects focusing on disabled people’s standard of living and social protection. The findings of this research show the disproportionate and significantly adverse effect of welfare reform on disabled people’s rights to independent living and to an adequate standard of living and social security. However, the UK Government has failed to act on this evidence and to implement the CRPD Committee’s recommendations regarding these rights.

#### **Key concerns**

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**UK**

Disabled people are more likely to live in poverty and material deprivation than people who are not disabled, and continue to be affected disproportionately by a range of social security reforms. Further retrogressive measures have been brought in since the CRPD Committee's inquiry concluded in 2016.<sup>48</sup>

UKIM remains seriously concerned about the continued failure of the UK Government to conduct an assessment of the cumulative impact on disabled people of multiple policy and law reforms in relation to living standards and social security.<sup>49</sup> In addition, UKIM continues to call on the UK Government to assess and justify retrogressive measures against the established UN criteria, namely to determine whether they are temporary, necessary, proportionate and non-discriminatory, and that they do not undercut a core minimum level of protection.<sup>50</sup>

## New evidence

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### UK

Research by the Joseph Rowntree Foundation (JRF) found that 30% of people living in a household with a disabled person live in poverty, compared to 19% of those in households without a disabled person.<sup>51</sup>

The Institute for Fiscal Studies (IFS) found that people aged 25–54 with a long-standing illness are 50% more likely to live in poverty and deprivation than those without. However, the gap in living standards between those with a long-standing illness and those without is likely to be an underestimate, since illness and disability are also likely to lead to higher costs of living.<sup>52</sup>

The National Audit Office (NAO) found that the Department for Work and Pensions (DWP) has not done enough to protect and support 'vulnerable claimants', who have experienced difficulties and hardship during the implementation of Universal Credit.<sup>53</sup>

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<sup>48</sup> UKIM (July 2017), p.7. See note 12.

<sup>49</sup> The UK Government published a [cumulative impact analysis of measures implemented since 2015/16](#), but it does not look specifically at adverse impacts on individuals sharing protected characteristics and on the realisation of human rights norms [accessed: 6 July 2018].

<sup>50</sup> Pillay, A. (chairperson, UN Committee on Economic, Social and Cultural Rights), [personal communication 16 May 2012](#), ref: CESCR/48<sup>th</sup>/SP/MAB/SW. See also '[Special Rapporteurs' joint communication to the UK Government on the Welfare Reform and Work Act](#)', ref: AL GBR 1/2016, 08/04/2016, p. 39 [both accessed: 17 July 2018].

<sup>51</sup> Joseph Rowntree Foundation (2017), '[UK Poverty 2017](#)' [accessed: 19 December 2017].

<sup>52</sup> Institute for Fiscal Studies (2018), '[Living standards, poverty and inequality in the UK: 2018](#)', p. 59 [accessed: 9 July 2018].

<sup>53</sup> National Audit Office (2018), '[Rolling out Universal Credit](#)', paragraphs 2.5–2.11 [accessed: 9 July 2018].

The UK Parliament Work and Pensions Select Committee found that, since 2013, 290,000 claimants of the Personal Independence Payment (PIP) and the Employment and Support Allowance (ESA) only received the correct award after challenging the DWP's initial decision.<sup>54 55</sup>

According to UK Government sources, 9% cent of initial PIP decisions between April 2013 and December 2017 were appealed against, and 4% were overturned at an appeal hearing, while 8% of ESA decisions between April 2014 and September 2017 were appealed against and 4% were overturned at an appeal hearing.<sup>56</sup>

New evidence suggests that benefit sanctions have had no tangible positive effects in moving disabled people closer to paid work and that the use of sanctions may have exacerbated many disabled people's existing illnesses and impairments, especially for those with mental health conditions.<sup>57</sup> The EHRC review of recent social security reforms also indicates that sanctions: do little to change claimant motivation; encourage hostility towards support services; and worsen relationships with job centre staff.<sup>58</sup>

The Council of Europe's Committee of Social Rights recently concluded that the UK does not conform with the right to social security under the European Social Charter because levels of statutory sick pay, minimum levels of ESA, and long-term incapacity and unemployment entitlements are lower than 40% of the median income, and 'manifestly inadequate'.<sup>59</sup>

## Great Britain

The EHRC's analysis of the tax and welfare reforms introduced between May 2010 and January 2018 revealed that their cumulative impact on disabled people by the

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<sup>54</sup> House of Commons Work and Pensions Select Committee (2018), '[PIP and ESA assessments](#)' [accessed: 10 July 2018].

<sup>55</sup> Claimants who are unhappy with the initial decision made on their PIP or ESA claim can challenge it at Mandatory Reconsideration (MR). Since 2013, there have been almost one million MRs of PIP and ESA decisions. Claimants who have completed MR can go to appeal if they are still unsatisfied with the DWP's decision. Rates of overturn of DWP decisions at appeal are high. Since 2013, there have been 170,000 PIP appeals; claimants won in 108,000 cases (63%). Since 2013, there have been 53,000 ESA appeals; claimants won in 32,000 cases (60%) (HM Courts and Tribunal Service (2017), '[Social security and child support tribunal data, table SSCS.3](#)' [accessed: 10 July 2018].

<sup>56</sup> House of Commons Work and Pensions Select Committee (2018), see note 54.

<sup>57</sup> Dwyer, P., Jones, K., McNeill, J., Scullion, L. and Stewart, A. (2018), '[Final findings: disabled people](#)' [accessed: 10 July 2018].

<sup>58</sup> EHRC (2018), '[The impact of welfare reform and welfare-to-work programmes: an evidence review](#)' [accessed: 11 July 2018]. See also House of Commons Work and Pensions Select Committee (2018), '[Benefit sanctions inquiry – written evidence from Equality and Human Rights Commission \(ANC0050\)](#)' [accessed: 11 July 2018].

<sup>59</sup> European Committee of Social Rights (2018), '[36th national report on the implementation of the European Social Charter: Conclusions XXI-2 \(2017\)](#)', United Kingdom [accessed: 31 January 2018].

2021/22 tax year will be significantly regressive. This is particularly so for policy decisions taken in the 2015–17 Parliament (the impacts of which are, for the most part, still to come). The findings include:

- Households with at least one disabled adult and a disabled child will lose over £6,500 a year (over 13% of their net income).
- Disabled lone parents with at least one disabled child will lose almost £10,000 of their annual net income.
- Adults with behavioural difficulties will lose around £2,350 a year.
- Adults with learning difficulties will lose around £1,750.
- Adults with mental health conditions will lose just over £1,799.<sup>60</sup>

Early findings from an EHRC analysis of the cumulative impact of changes to public spending indicate that certain groups, including people who are the most severely disabled, are affected disproportionately by public spending cuts.<sup>61</sup> The combined analysis of the public spending changes and the EHRC's earlier report on the impact of changes to tax and welfare reforms indicates that the losses in income for households where there is a higher disability score<sup>62</sup> are even greater.

## England

Recent research commissioned by the Local Government Association (LGA) found that around 900,000 disabled people will see their weekly income fall by at least £50 a week by 2020 due to the cumulative impact of welfare reform. Under Universal Credit the average household containing a disabled person will be worse off in 2020 by £51.47 per week.<sup>63</sup>

## Wales

Recent evidence indicates that 39% of disabled people in Wales are living in poverty, compared with 22% of non-disabled people.<sup>64</sup> The poverty rate for disabled people in Wales is the highest in the UK. The poverty rate among people in families that

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<sup>60</sup> EHRC (2018), '[The cumulative impact of tax and welfare reforms](#)' [accessed: 10 July 2018].

<sup>61</sup> EHRC (forthcoming; to be published in October 2018). This report builds on earlier work by the EHRC on the cumulative impact of tax and welfare reforms (see note 60). Together these two reports present the cumulative impact on living standards of public spending and welfare reforms in the UK.

<sup>62</sup> The disability 'score' is based on the number of functional disabilities recorded across all household members.

<sup>63</sup> Local Government Association (2017), '[The cumulative impact of welfare reform: a national picture](#)' [accessed: 11 July 2018].

<sup>64</sup> Joseph Rowntree Foundation (2018), '[Poverty in Wales 2018](#)' [accessed: 18 July 2018].

include at least one disabled person is also higher in Wales than elsewhere in the UK, with 29% of families in Wales with one disabled person living in poverty.<sup>65</sup>

## Northern Ireland

Only 46% of new PIP claims were successful during the period June 2016 to February 2018, and 27% of claimants who had previously received Disability Living Allowance (DLA) and were reassessed for PIP were unsuccessful and left with no access to disability-specific benefits.<sup>66</sup>

The Department for Communities has made no advancements in the development of a robust disability strategy (including a measurable plan of action) for improving the living conditions of all disabled people, and of effective monitoring arrangements.

## Relevant steps taken by UK governments

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### UK

UKIM previously shared with the CRPD Committee its concerns about the changes brought in by the Social Security (Personal Independence Payment) (Amendment) Regulations 2017.<sup>67</sup> In December 2017, the high court found that the rules brought in by the 2017 regulations that differentiate between physical and mental health issues in the award of the mobility component of PIP are unlawfully discriminatory against people with a mental health condition, in breach of the Human Rights Act 1998. The EHRC intervened in this case and put forward its view that the rule infringed and was 'fundamentally at odds with Article 19 CRPD's guarantees'. The high court agreed.<sup>68</sup>

Subsequently, DWP announced that all 1.6 million people receiving PIP would have their claim reviewed,<sup>69</sup> it would end unnecessary PIP reviews for people with the most severe health conditions, and that it is currently developing new guidance.<sup>70</sup> Concerns have been raised by disability rights organisations over the delay in

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<sup>65</sup> JRF (2018), see note 64.

<sup>66</sup> Northern Ireland Department for Communities (May 2018), '[Personal Independence Payment statistics – February 2018](#)' [accessed: 28 August 2018].

<sup>67</sup> '[The Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017: explanatory note](#)' [accessed: 18 July 2018].

<sup>68</sup> [RF v SSWP \[2017\] EWHC 3375 \(Admin\), paragraphs 60 and 61](#) [accessed: 7 August 2018].

<sup>69</sup> UK Parliament (2018), '[Personal Independence Payment: mental health: written question – 124308](#)' [accessed: 31 January 2018].

<sup>70</sup> Department for Work and Pensions (2018), '[Government to end unnecessary PIP reviews for people with most severe health conditions](#)' [accessed: 11 July 2018].

implementing the judgment pending the publication of new PIP assessment guidance.<sup>71</sup>

In June 2018, the high court found that the implementation arrangements of Universal Credit unlawfully discriminated against two severely disabled men who both saw their benefits dramatically reduced when they moved to another local authority area, and were therefore required to claim Universal Credit.<sup>72</sup> Before moving onto Universal Credit, both men were in receipt of the severe disability premium (SDP) and enhanced disability premium (EDP), which were aimed at meeting the additional care needs of severely disabled people living alone with no carer. The court found that the implementation arrangements were contrary to article 14 ECHR in conjunction with article 1, protocol 1. The EHRC intervened in this case, arguing that article 14 of the ECHR, read with the UN Convention on the Rights of Persons with Disabilities (UN CRPD), imposes positive obligations on the UK to address and remove the obstacles faced by disabled people in enjoying equal rights.

The DWP has committed to introducing changes that will ensure no severely disabled person in receipt of the SDP will be required to move onto Universal Credit until transitional protection is in place, and to compensate those who have lost out.<sup>73</sup>

## Northern Ireland

In addition to a number of welfare reform ‘flexibilities’<sup>74</sup> that are specific to Northern Ireland and agreed by the Northern Ireland Executive as part of the ‘fresh start’<sup>75</sup> agreement, a Welfare Reform Mitigations Working Group was established to develop proposals to assist people through the changes to the welfare system. This working group produced a report that detailed a mitigation strategy,<sup>76</sup> subsequently approved by the Northern Ireland Executive. However, a number of the key mitigations for disabled people are limited to one year in duration.<sup>77</sup>

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<sup>71</sup> Disability Rights UK (2018), [‘Ten year PIP reviews for people with most severe health conditions’](#) [accessed: 11 July 2018].

<sup>72</sup> [R \(TP and AR\) v Secretary of State for Work and Pensions \(Universal Credit\) \[2018\] EWHC 1474 \(Admin\)](#) [accessed: 28 August 2018].

<sup>73</sup> UK Parliament (7 June 2018), [‘Universal Credit: written statement – HCWS745’](#) [accessed: 28 August 2018].

<sup>74</sup> These flexibilities include: the housing element of Universal Credit (UC) to be paid to the landlord rather than the tenant; claimants to receive fortnightly rather than monthly payments of UC; and payment of UC for joint claims can, in exceptional circumstances, be split rather than paid into a single bank account.

<sup>75</sup> Northern Ireland Executive (2015), [‘A fresh start: the Stormont agreement and implementation plan’](#) [accessed: 28 August 2018].

<sup>76</sup> Northern Ireland Executive (2016), [‘Welfare Reform Mitigations Working Group report’](#) [accessed: 28 August 2018].

<sup>77</sup> For example, supplementary payments for: those who cease to receive contributory Employment and Support Allowance (ESA) and are not entitled to income-based ESA; those who, after

The Department for Communities has funded the Law Centre NI to publish a pamphlet 'Understanding, avoiding and challenging sanctions: an adviser guide'.<sup>78</sup>

The Department for Communities has introduced the Make the Call benefit uptake programme. It aims to improve the uptake of benefits and other government support and services by people who are entitled, but not claiming. By 2019, it aims to target a minimum of 100,000 people (including disabled people) with the offer of a full benefit entitlement check and to secure at least £40 million in additional benefits.<sup>79</sup> Disabled people's organisations (DPOs) have reported that disabled persons are afraid to engage with this programme for fear that their benefits will be reduced or completely removed.<sup>80</sup>

## Scotland

The Social Security (Scotland) Act 2018<sup>81</sup> established a devolved social security system that has responsibility for disability-related benefits such as Carer's Allowance, DLA and PIP. While the Act reflects some elements of the right to social security, the Scottish Government rejected an amendment proposed by the SHRC to incorporate this right fully into primary legislation.

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assessment, qualify for Personal Independence Payment (PIP) at a reduced rate; those who, after assessment, are judged to have no entitlement to PIP but score at least four points; and carers who lose Carer's Allowance if the person they care for does not, following assessment, qualify for Personal Independence Payment.

<sup>78</sup> The Welfare Changes Advice Service, '[Sanctions guide 2018: Understanding, avoiding and challenging sanctions](#)' [accessed: 10 July 2018].

<sup>79</sup> Department for Communities, '[Make the Call](#)' [accessed: 5 September 2018].

<sup>80</sup> Meeting between Department for Communities and disabled people's organisations (DPOs), Stormont, 4 September 2018.

<sup>81</sup> [Social Security \(Scotland\) Act 2018](#) [accessed 28 August 2018].

## 4. The right to work and employment (article 27)

### **CRPD Committee concluding observations 2017, paragraph 57:**

‘The Committee recommends that the State party ... develop and decide upon an effective employment policy for persons with disabilities aimed at ensuring decent work for all persons with disabilities, bearing in mind the State party’s target of 1 million jobs for persons with disabilities, and ensure equal pay for work of equal value, focusing especially on women with disabilities, persons with psychosocial and/or intellectual disabilities and persons with visual impairments, and monitor those developments; ... [and] ensure that the legal and administrative requirements of the process to assess working capabilities, including the Work Capability Assessment, are in line with the human rights model of disability, that those who conduct the assessments are qualified and duly trained in that model, and that the assessments take into consideration work-related as well as other personal circumstances.’

### **Summary of progress**

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In the last 12 months, further information has become available on the failure of the UK to safeguard disabled people’s right to work and employment. The UK and devolved governments have announced a number of commitments to address these failings and to implement the relevant CRPD Committee’s recommendations; these commitments are welcomed. However, concerns are already emerging regarding barriers to their effective implementation, as set out below. These include limited eligibility, funding shortfalls and lack of measurable targets.

The UK Government has established the Inter-Ministerial Group on Disability and Society, with one of its key aims being to increase disability employment rates. But there are concerns about the practical operations of this group and the omission of a specific reference to the CRPD or the CRPD Committee’s recommendations in its terms of reference. In addition, the listed membership of the inter-ministerial group

does not adequately reflect that the devolved governments also have responsibility for taking action to address the disability employment gap.<sup>82</sup>

## Key concerns

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### UK

Disabled people in the UK are much less likely to be in employment than non-disabled people. They experience barriers to finding and staying in work, and are on average paid less.<sup>83</sup>

## New evidence

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### UK

While the disability employment gap has narrowed slightly since 2015, disabled people are still less likely to be in employment than non-disabled people. In the UK, 50.7% of disabled people aged 16–64 were in employment in April to June 2018, compared with 81.1% of non-disabled people.<sup>84</sup> Employment rates vary considerably by type of disability or health condition, but the highest employment rate for a health condition group (difficulty in hearing) was still 13 percentage points below the equivalent figure for non-disabled working-age adults. The lowest rates are for those with mental health conditions and learning difficulties.<sup>85</sup> Less than a quarter of people with learning difficulties, a speech impediment or mental health conditions were in employment.<sup>86</sup>

Disabled people in the UK are paid less on average than non-disabled people.<sup>87</sup> A recent TUC report found that the disability pay gap (15%) was higher in 2016/17 than in 2013/14, 2014/15 or 2015/16.<sup>88</sup> It found that, in 2017, the average hourly pay for disabled workers was £9.90, compared with £11.40 for non-disabled workers – resulting in a disability pay gap of £2,730 per year. The TUC also reports that

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<sup>82</sup> Office for Disability Issues (2018), see note 7.

<sup>83</sup> UKIM (July 2017), p.7, see note 12.

<sup>84</sup> Office for National Statistics (2018), '[Labour market status of disabled people. August 2018: table AO8: economic activity of people with disabilities](#)' [accessed: 15 August 2018].

<sup>85</sup> House of Commons Library (2018), '[People with disabilities in employment](#)' [accessed: 5 July 2018].

<sup>86</sup> House of Commons Library (2018), see note 85.

<sup>87</sup> UKIM (July 2017), see note 12.

<sup>88</sup> TUC (2018), '[Disability employment and pay gaps 2018](#)'. See also: EHRC (2017), '[The disability pay gap](#)' and EHRC (2017), '[Being disabled in Britain](#)' [all accessed: 3 July 2018].

disabled workers are more likely to work in lower-paid occupations than non-disabled workers.

## Wales

In Wales, just 45.2% of disabled people aged 16–64 are currently in employment, compared to 80.3% of non-disabled people aged 16–64, with the gap being larger for disabled people who have no or few qualifications, and for those with particular conditions, such as mental health conditions or multiple impairments.<sup>89</sup> Only 1.5% of apprenticeships in Wales are taken up by disabled people.<sup>90</sup>

## Northern Ireland

Statistics published by the Northern Ireland Statistics and Research Agency<sup>91</sup> show that just under one in five people (20%) of working age in Northern Ireland had a disability, but that:

- more than double the proportion (32%) of disabled people have no qualifications compared with non-disabled people (12%), and
- non-disabled people are more than twice as likely to be in employment (79%) than disabled people (35%).

Disabled people have reported that the Northern Ireland Statistics and Research Agency's categorisations used to encapsulate different types of disability are too restrictive and, as a result, the above statistics represent a conservative estimation of the reality.<sup>92</sup>

It is understood that, while structures to take forward the disability employment strategy have been established and action plans developed, the latter have yet to be implemented.

Statistics from the Department of Education show that obtaining the minimum required qualifications to gain employment continues to be a particular challenge for disabled people in Northern Ireland. In 2016/17, of the Northern Ireland school leavers with special educational needs at key stages 1–4, 41.5% had at least five GCSEs at grades A\*–C, including English and maths. This reduced to 24.4% for school leavers with special educational needs at key stage 5. By comparison, 78.4%

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<sup>89</sup> Welsh Government (March 2018), '[Employability plan](#)' [accessed: 28 August 2018].

<sup>90</sup> Welsh Government (2018), '[Unique learners in work-based learning provision by programme and local authority of domicile](#)' [accessed: 9 May 2018].

<sup>91</sup> Northern Ireland Statistics and Research Agency (May 2018), '[Quarterly supplement to the labour market report, January–March 2018](#)', p. 3 [accessed: 28 August 2018].

<sup>92</sup> UN CRPD Independent Mechanism for NI stakeholder roundtable, 10 September 2018.

of school leavers with no special educational needs had the equivalent qualifications.<sup>93</sup>

## Scotland

The Scottish Government's analysis of data published by a representative sample of public sector bodies showed that, on average, less than 5% of staff reported as disabled, with the figures for individual public bodies varying from 0.1% to 11%.<sup>94</sup>

## Relevant steps taken by UK governments

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### UK

In November 2017, the UK Government launched plans to increase the number of disabled people in work by one million over the next 10 years. Actions to achieve this target include:

- building capability to deliver tailored support
- ensuring access to personalised and tailored employment support
- continuously improving the assessment process, and
- empowering those furthest away from the labour market.<sup>95</sup>

To achieve the target of getting one million more disabled people into work, there would have to be 4.5 million disabled people in employment by 2027, an increase of 21% on current levels.<sup>96</sup> This programme of action, and the commitment to building a comprehensive evidence base about what works for whom, why and at what cost, is a very positive first step. However, UKIM would welcome clarity on ensuring that responsibilities for the strategy are embedded across all four nations and all relevant government departments, and that this accountability is demonstrated through regular monitoring and evaluation of progress. The UK Government has committed to achieve the Sustainable Development Goals, by 2030, agreed by the UN member

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<sup>93</sup> Department of Education (2018), '[Statistical bulletin 4/2018: qualifications and destinations of Northern Ireland school leavers 2016/17](#)' [accessed: 11 September 2018].

<sup>94</sup> Scottish Government (2018), '[Increasing the employment of disabled people in the public sector: a consultation](#)' [accessed: 28 August 2018].

<sup>95</sup> Department for Work and Pensions and Department of Health and Social Care (2017), '[Improving lives: the future of work, health and disability](#)' [accessed: 3 July 2018].

<sup>96</sup> House of Commons (2018), p. 6, see note 85.

states, which entail goal 8.5 on full and productive employment and decent work for all, including disabled people, and equal pay for work of equal value.<sup>97</sup>

The UK Government has also committed to engaging with external stakeholders to explore ways to improve claimants' experiences of the Work Capability Assessment (WCA).<sup>98</sup> While this commitment is welcome, UKIM's view is that further reform of WCA processes is urgently needed.<sup>99</sup> We also commend the new criteria and guidance for WCA assessors introduced in September 2017, allowing them to recommend that claimants with the most severe and life-limiting conditions should not be reassessed.<sup>100</sup>

Despite the benefits of the Access to Work scheme,<sup>101</sup> there are concerns that it focuses on those with physical impairments<sup>102</sup> and that the application process can take too long.<sup>103</sup> The DWP has taken action that aims to reduce waiting times, and the proportion of Access to Work awards to people with mental health conditions has increased gradually.<sup>104</sup>

The Access to Work cap was raised significantly in April 2018 to a maximum of £57,200 per year and this will be increased annually.<sup>105</sup> However, evidence indicates that some disabled people are negatively affected by the cap on the amount of

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<sup>97</sup> In the UK, oversight sits with the Department for International Development. The policy paper '[Agenda 2030 – Delivering the Global Goals](#)' (March 2017) outlines UK Government policy and activity against each of the goals. However, the UK has neither adopted the UN's set of indicators nor set out its own indicators for measuring progress. The UK Government has committed to delivering a voluntary report to the UN High-level Political Forum for Sustainable Development in 2019.

<sup>98</sup> DWP and DHSC (2017), pp. 21–2, see note 95. See also EHRC (2018), '[Progress on socio-economic rights in Great Britain](#)' [accessed: 10 July 2018].

<sup>99</sup> See concerns raised in UKIM submissions (February 2017 and July 2017); for example, the fact that some claimants with serious health conditions or impairments were found 'fit for work', and that assessments, reassessments and poor decisions are adversely affecting the physical and mental health of claimants.

<sup>100</sup> DWP (2017), '[Policy paper: Employment and Support Allowance and Universal Credit: changes to the Work Capability Assessment from 29 September 2017](#)' [accessed: 6 September 2018].

<sup>101</sup> Access to Work provides practical and financial support to disabled people and their employers. It covers Great Britain. Reviews have found the scheme to be cost effective, with positive benefits including increased productivity and staff retention, and reduced sickness absence. A similar scheme is available in Northern Ireland called Access to Work (NI) It is delivered by the Department for Communities through the Preparation for Work Programmes Branch and JobCentres.

<sup>102</sup> House of Commons Library (2018), '[Briefing paper: People with disabilities in employment](#)' [accessed: 5 July 2018].

<sup>103</sup> House of Commons Work and Pensions Committee (2017), '[Disability employment gap – seventh report of session 2016-17](#)', paragraph 46 [accessed: 18 December 2017].

<sup>104</sup> DWP (2017), '[Access to Work statistics](#)', p. 7 [accessed: 2 August 2018].

<sup>105</sup> DWP (2018), '[Grant to support disabled people in the workplace rises by over a third](#)' [accessed: 3 July 2018].

financial support provided by Access to Work, particularly deaf people who communicate using sign language.<sup>106</sup>

## Great Britain

In April 2017, new gender pay gap reporting requirements were introduced for all private and voluntary organisations with 250 or more employees in Britain and listed public sector bodies in England.<sup>107</sup> In Scotland<sup>108</sup> and Wales,<sup>109</sup> specific equality duties apply to listed devolved public bodies. In Scotland, this includes duties on listed public bodies with over 20 employees to publish statements on equal pay for disabled employees and information about the occupational segregation of disabled and non-disabled employees. Across the UK, there is no requirement on public or private employers to publish information on disability pay gaps.

## Wales

The Welsh Government's employability plan<sup>110</sup> recognises that too few disabled people are in work. In this plan, the Welsh Government commits to working with partners to address the issues behind these inequalities, including employer attitudes, job design and working practices. A particular commitment is to increase the number of employers who place an emphasis on creating workplaces that are inclusive and supportive environments for disabled people. The plan does not set out clear targets for improvements, instead committing the Welsh Government to working with key partners to set those targets.

In 2018, the Welsh Government launched the Inclusive Apprenticeship Working Group to identify the barriers to disabled people accessing apprenticeships and to find ways to increase the number of disabled people starting and completing apprenticeships.<sup>111</sup>

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<sup>106</sup> In [DB v Secretary of State for Work and Pensions \(ESA\) \[2017\] UKUT 251 \(AAC\)](#) it was decided that despite the disparate impact of the cap on deaf users, DWP had complied with its Public Sector Equality Duty because the disparate impact could be objectively justified as a proportionate means of achieving a legitimate aim.

<sup>107</sup> [The Equality Act 2010 \(Gender Pay Gap Information\) Regulations 2017](#) and [The Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017](#) [both accessed: 28 August 2018].

<sup>108</sup> The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (as amended in 2015 and 2016). Information about the Scottish specific duties regulations is available in ['Regulations for the Specific Duties and details on which public authorities are covered'](#) [accessed: 28 August 2018].

<sup>109</sup> [The Equality Act 2010 \(Statutory Duties\) \(Wales\) Regulations 2011](#) [accessed 28 August 2018].

<sup>110</sup> Welsh Government (March 2018), see note 89.

<sup>111</sup> Welsh Government (2018), ['Written response by the Welsh Government to the report produced by the Economy, Infrastructure and Skills Committee entitled Apprenticeships in Wales'](#), p.3 [accessed: 15 August 2018].

## Northern Ireland

The Northern Ireland Executive's outcomes delivery plan 2018/19 commits to:

- assisting 450 disabled people into employment, education or training through the European Social Fund
- supporting 17,600 people through employability programmes, including programmes for people with health conditions and/or disabilities, and
- offering all new benefit claimants with a health condition or a disability a 'health and work conversation' to help them make decisions about returning to work.<sup>112</sup>

In September 2017, the Permanent Secretary in the Department of Education raised concerns regarding funding for the department, highlighting a shortfall of £105 million in 2017/18.<sup>113</sup> Reduced funding may lead to a failure to put in place reasonable adjustments to ensure the inclusion of disabled children in schools. This will potentially have a negative knock-on effect on the future employability of those children affected. In May 2018, the Education Authority in Northern Ireland held a public consultation on a future framework of educational provision for children in the early years with special educational needs.<sup>114</sup> In July 2018, the Education Authority also had a public consultation on its proposed equality and disability action plans for 2018 to 2022.<sup>115</sup> Depending on the outcomes of these consultations, they may have a positive effect on the future employability of the children and young people affected.

## Scotland

In April 2018, a voluntary employment support service was introduced, funded by the Scottish Government.<sup>116</sup> The Scottish Government also announced its intention to publish an action plan to halve the disability employment gap.<sup>117</sup> It has carried out a public consultation exercise to identify how to increase the number of disabled people employed in the public sector.<sup>118</sup> As part of this consultation exercise, it proposed: setting targets for the number of disabled people employed in the public

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<sup>112</sup> Northern Ireland Executive Office (2018), '[Outcomes delivery plan 2018/19](#)', pp. 47–8 [accessed: 28 August 2018].

<sup>113</sup> BBC News Northern Ireland (25 September 2017), '[Department of Education faces £105m cash pressures](#)' [accessed: 28 August 2018].

<sup>114</sup> NI Education Authority (2018), '[A case for transformation: Proposed framework of future provision for children in the early years with special educational needs](#)' [accessed: 28 August 2018].

<sup>115</sup> NI Education Authority (2018), '[Public consultation: draft equality and disability action plans 2018-2022](#)' [accessed: 11 September 2018].

<sup>116</sup> See [Fair Start Scotland website](#) [accessed: 28 August 2018].

<sup>117</sup> Scottish Government (2018), '[A fairer Scotland for disabled people](#)' [accessed: 28 August 2018].

<sup>118</sup> Scottish Government (2018), see note 94.

sector; increasing paid work experience/internships; and requiring public bodies to monitor and report on progress to achieve targets.

## 5. Prejudice and negative attitudes (articles 8 and 16)

### CRPD Committee inquiry recommendations 2016, paragraph 114 (h):

‘Take appropriate measures to combat any negative and discriminatory stereotypes or prejudice against persons with disabilities in public and the media, including the assertion that dependency on benefits is in itself a disincentive to seeking employment, implement broad mass media campaigns, in consultation with organizations representing persons with disabilities, particularly those affected by the welfare reform, to promote them as full rights holders, in accordance with the Convention; and adopt measures to address complaints of harassment and hate crime by persons with disabilities, promptly investigate those allegations, hold the perpetrators accountable and provide fair and appropriate compensation to victims.’

### Summary of progress

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The UK and devolved governments have introduced a number of commitments and measures with a view to tackling prejudice and negative attitudes towards disabled people. However, the extensive data available indicate that progress to date is insufficient and, therefore not in line with the CRPD Committee’s recommendations.

### Key concerns

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#### UK

Some steps have been taken across the UK to reduce prejudice and negative attitudes towards disabled people. However, prejudice towards disabled people persists. This includes negative attitudes towards disabled people claiming social

security benefits and negative assumptions about disabled people's human value and quality of life.<sup>119</sup>

## New evidence

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### UK

In 2017, 75% of students in secondary schools and colleges with autism and Asperger's syndrome, and 70% of those with a physical disability said they had been bullied compared with 50% of students with no disability.<sup>120</sup>

### Great Britain

Research examining prejudice faced by disabled people found that 32% of disabled people felt there was a lot of disability-related prejudice, but only 22% of non-disabled people thought this was the case.<sup>121</sup> This indicates a gap between the reality of disabled people's lives and the public's perception. The study also found evidence that paternalist attitudes about disabled people are still prevalent:

- 75% of the study's respondents thought disabled people need to be cared for some or most of the time.
- 13% tended to 'hardly ever' or 'never' think of disabled people as the same as everyone else.

In a related study of disabled people, national disability charity Scope found that:

- 40% of all respondents indicated that they did not feel valued by society
- 49% responded that they feel excluded from society because of their long-term impairment or health condition, and
- 42% felt the UK is a good place for disabled people to live.<sup>122</sup>

On a more positive note, the attitude towards disabled people receiving welfare benefits appears to be changing, albeit slowly. In 2013, 54% of respondents to the British Social Attitudes (BSA) survey stated that government should spend more on

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<sup>119</sup> UKIM (July 2017), pp. 17–8, see note 12.

<sup>120</sup> Ditch the Label (2017), '[The Annual Bullying Survey 2017](#)' [accessed: 17 August 2018].

<sup>121</sup> Scope (2018), '[The disability perception gap](#)' [accessed: 6 July 2018].

<sup>122</sup> Scope (2018), '[Independent. Confident. Connected](#)' [accessed: 6 September 2018].

benefit claimants who are disabled people who cannot work; the percentage increased to 61% in 2015 and 67% in 2017.<sup>123</sup>

## England and Wales

The police registered 5,558 disability-motivated hate crime cases in England and Wales in 2016/17. This is a 53% increase since 2015/16 (though this significant increase may be partly a reflection of improvements in reporting).<sup>124</sup> Recent research suggests a significant drop-off between the number of cases recorded by the police and the number of prosecutions.<sup>125</sup> Estimates from the Crime Survey for England and Wales indicate an average of 67,000 cases of disability hate crime per year.<sup>126</sup>

The UK Parliament Petitions Select Committee led an inquiry into the online abuse of disabled people, which reported in August 2018.<sup>127</sup> The Committee produced draft recommendations for consultation, including that: social media companies should be required to ensure their policies and processes are accessible to, and developed in partnership with, disabled people; and that the UK Government commit to introducing new legislation covering online communications by 2020, reflecting findings from the ongoing Law Commission review of the current legal framework.<sup>128</sup>

## Northern Ireland

In 2017/18, there were 48 recorded disability motivated hate crimes (down 12 from 2016/17).<sup>129</sup> UKIM believes the number of reported incidents significantly under-represents the extent of disability hate crime throughout the UK, including NI.<sup>130</sup>

## Scotland

In 2017/18, 284 charges with an aggravation of prejudice relating to disability were reported to the police. This is 51% more than in 2016/17. It has been recognised that this large increase may be partially due to increased awareness of what is a disability hate crime and of the support available to report such crime. However, this

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<sup>123</sup> NatCen (2018), ['British Social Attitudes survey 2018'](#) [accessed: 12 July 2018].

<sup>124</sup> Home Office (2017), ['Hate crime, England and Wales, 2016 to 2017'](#) [accessed: 5 July 2018].

<sup>125</sup> Walters, M., Wiedlitzka, S. and Owusu-Bembah, A. (2017), ['Hate crime and the legal process: options for law reform'](#), University of Sussex, p. 70 [accessed: 5 July 2018].

<sup>126</sup> Walters, M. et al (2017), see note 125.

<sup>127</sup> House of Commons Petitions Committee (2018), ['Online abuse and the experience of disabled people: draft recommendation for consultation'](#) [accessed: 4 September 2018].

<sup>128</sup> Law Commission, ['Offensive online communications'](#) [accessed: 2 October 2018].

<sup>129</sup> Police Service of Northern Ireland (2018), ['Incidents and crimes with a hate motivation recorded by the police in Northern Ireland: quarterly update to 31 March 2018'](#), table 18 [accessed: 28 August 2018].

<sup>130</sup> UKIM (2017), ['Disability rights in the UK'](#), p. 44 [accessed: 14 September 2018].

type of crime continues to be under-reported compared with other forms of hate crime.<sup>131</sup>

## Relevant steps taken by UK governments

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### UK

There has been some work around disability confidence and disability champions across different industry sectors. However, UKIM is not aware of any actions to address the main concerns of the CRPD Committee and to combat any negative and discriminatory stereotypes or prejudice against disabled people among the public and in the media. In particular, there have been no steps taken to tackle the negative attitudes towards those claiming social security benefits, and, more broadly, to promote the human rights model of disability. On the contrary, there are examples of government comments that have potentially reinforced negative attitudes and the stigma surrounding mental health and disability. This includes the Chancellor of the Exchequer, Philip Hammond, stating before a committee of the UK Parliament: 'It is almost certainly the case that by increasing participation in the workforce, including far higher levels of participation by marginal groups and very high levels of engagement in the workforce, for example of disabled people – something we should be extremely proud of – may have had an impact on overall productivity measurements.'<sup>132</sup> Many people understood this statement as indicating that the increase in disabled people in employment is partly responsible for the UK's decreasing productivity.<sup>133</sup>

New measures proposed by the UK Government to tackle online hate speech, harassment and abuse, including a social media code of practice and transparency reporting, may prove useful for individuals experiencing disability-related harassment, especially in relation to the process of reporting incidents.<sup>134</sup>

### England and Wales

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<sup>131</sup> Crown Office and Procurator Fiscal Service (2018), '[Hate crime in Scotland, 2017-18](#)'. Available [here](#) [accessed: 27 July 2018].

<sup>132</sup> *The Independent* (6 December 2017), '[Philip Hammond claims disabled people finding jobs is partly responsible for UK's falling productivity](#)' [accessed: 5 July 2018]. See also *The Guardian* (11 April 2018), '[We know about the gender pay gap. But what about the disability pay gap?](#)' [accessed: 6 July 2018].

<sup>133</sup> Scope (2017), '[Letter to the Prime Minister](#)', 7 December 2017 [accessed: 5 July 2018].

<sup>134</sup> Department for Digital, Culture, Media and Sport (2018), '[Government response to the Internet Safety Strategy green paper](#)' [accessed: 6 July 2018].

The criminal justice and police inspectorates, HM Crown Prosecution Service Inspectorate and HM Inspectorate of Constabulary and Fire & Rescue Services, are currently carrying out a joint inspection focused specifically on disability hate crime.<sup>135</sup>

## Northern Ireland

The draft programme for government indicator 42<sup>136</sup> includes a commitment by the Northern Ireland Executive to develop public awareness-raising initiatives designed to counter negative attitudes about disabled people, co-designed with disabled people. There should be an initial focus on the education sector and employers that will start in 2018/19. There has been no obvious progress on this commitment to date. The Department for Communities has acknowledged that devolved departments are limited in what they can do without ministers in place to provide approval for new policies and additional resources.<sup>137</sup>

Concerns have also been raised that the language of the draft programme for government reinforces prejudices against disabled people by focusing on disabled people as vulnerable and those in need, as opposed to rights holders.<sup>138</sup>

## Scotland

In 2017, the Scottish Government published its response to the report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion.<sup>139</sup> This response included commitments to: establish a multi-agency delivery group with ministerial oversight to take forward the implementation of the advisory group's recommendations; and consider the recommendations of the independent review of hate crime legislation, and how to implement these.

The independent review has now published its report and made a series of recommendations to the Scottish Government.<sup>140</sup> It includes a recommendation for creating offences to deal with conduct that 'stirs up' hatred, also covering the online sphere, to be introduced in respect of each of the protected characteristics, including disability. Other recommendations with a potential impact on disabled people include

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<sup>135</sup> See '[Hate crime scoping study](#)' [accessed: 6 September 2018].

<sup>136</sup> Northern Ireland Executive (2017), see note 30.

<sup>137</sup> Meeting between Department for Communities and DPOs, Stormont, 4 September 2018.

<sup>138</sup> UN CRPD Independent Mechanism for NI stakeholder roundtable, 10 September 2018.

<sup>139</sup> Scottish Government (2017), '[Tackling prejudice and building connected communities – Scottish Government response to the report of the Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion](#)' [accessed: 28 August 2018].

<sup>140</sup> Lord Bracadale (2018), '[Independent review of hate crime legislation in Scotland: final report](#)' [accessed: 28 August 2018].

a new provision that would allow the courts to recognise offences that involve the exploitation of vulnerable people and provisions to ensure that hate crime offences based on someone's association with a protected characteristic, such as disability, are covered by statutory aggravations. The government has not yet published its response to the review.

## 6. Access to justice (articles 12 and 13)

### CRPD Committee inquiry recommendations 2016, paragraph 114 (f):

‘Ensure access to justice by providing appropriate legal advice and support, including through reasonable and procedural accommodation for persons with disabilities seeking redress and reparation for the alleged violation of their rights, as covered in the present report.’

### Summary of progress

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There have been some promising developments in terms of reviewing access to justice for disabled people and introducing specific guidance on this issue across the UK. However, overall there has been little progress on the UK’s implementation of the relevant CRPD Committee recommendations.

### Key concerns

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#### UK

Education tribunals are not able to award financial compensation where there has been a finding of disability discrimination or harassment.<sup>141</sup>

Despite newly revised guidance, there is no formal system of support in court for people with mental health conditions and learning disabilities in place across the UK.

#### England and Wales

There are continuing barriers to accessing justice, for example in relation to social security cases. There has been a substantial decrease in the number of disabled people being granted legal aid in the wake of the legal aid reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The

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<sup>141</sup> UKIM (July 2017), pp. 10 and 63, see note 12.

removal of welfare benefits law from the scope of legal aid has exacerbated the impact of recent welfare reforms, which is likely to have affected disabled people disproportionately.<sup>142</sup>

## Scotland

Disabled people may be prevented from accessing justice on an equal basis with others because of significant increases in court fees in Scotland.<sup>143</sup>

Despite widespread objection and concerns about proportionality, the Scottish Government continues to implement its policy of full-cost recovery from civil court litigants, rather than provide publicly funded civil courts. In particular, in February 2018, it implemented further significant and targeted increases in court fees. There is a real risk that the high cost of fees will have a disproportionate effect on disabled people's ability to access justice.

The Scottish Government has also targeted significant increases in fees in the appeal courts. This raises a broader concern that this may deter access to justice in relation to the novel, complex and often untested cases involving equality and human rights arguments, and may hinder the development of equality and human rights jurisprudence in Scotland.

## New evidence

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### UK

Independent research suggests there is poor and inconsistent use of reasonable adjustments in the criminal justice system for defendants with mental health conditions and learning disabilities.<sup>144</sup> Particular concern has been raised about the underuse of defendant intermediaries to aid comprehension and participation during criminal justice proceedings.<sup>145</sup>

Deaf people using an interpreter continue to be denied the opportunity to carry out jury service in courts. Although, since 1999, the UK Government has repeatedly indicated its commitment to address the issue in England and Wales, there have

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<sup>142</sup> EHRC (2018), ['The impact of LASPO on routes to justice'](#) [accessed: 6 September 2018].

<sup>143</sup> UKIM (July 2017), p 7, see note 12.

<sup>144</sup> JUSTICE (2017), ['Mental health and fair trial'](#) [accessed: 24 September 2018]. EHRC (2017), ['Experiences of people with a learning disability in the Scottish criminal justice system'](#) [accessed: 24 September 2018].

<sup>145</sup> JUSTICE (2017), see note 144.

been no changes to date.<sup>146</sup> The EHRC is providing legal assistance in a case involving a deaf man who was told he was not required for jury service after disclosing that he was deaf.<sup>147</sup>

## England and Wales

LASPO has had a detrimental impact on people's access to affordable and impartial legal advice. Applications for legal aid and expenditure on legal aid in England and Wales have continued to fall since LASPO came into force in 2013. By March 2018, the number of cases where legal aid was provided for initial advice had fallen by more than 75% compared with pre-LASPO levels,<sup>148</sup> and the number of grants for legal aid for representation had fallen by 30%.<sup>149</sup> The number of cases receiving funding for legal help, which provides initial legal advice and assistance, has fallen by 76% since LASPO was introduced, and continues to decline.<sup>150</sup> The high demand for advice on disability benefits means that the almost complete removal of welfare benefits from the scope of legal aid has had a disproportionate impact on disabled people or those with a long-term health condition. People entitled to disability benefits relied on legal aid to support appeals of incorrect decisions and to provide a valuable check on decision-making concerning eligibility for welfare benefits.<sup>151</sup>

The revisions to the financial eligibility criteria for legal aid have had a disproportionate impact on various groups, including disabled people, women, children, and migrants.<sup>152</sup> Furthermore, there has been a 99% decrease in support provided by the Legal Aid Agency for clients with disability-related welfare benefits issues, compared with pre-LASPO levels, and the total number of such claims has plummeted from 29,801 in 2011/12 to 308 in 2016/17.<sup>153</sup>

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<sup>146</sup> *The Independent* (10 November 1999), '[Ban on severely deaf jurors is upheld by court](#)' [accessed: 15 August 2018].

<sup>147</sup> Disability News Service (23 August 2018), '[Deaf campaigner takes court action over BSL jury ban](#)' [accessed: 29 August 2018].

<sup>148</sup> Legal Aid Agency (2018), '[Legal aid statistics tables – January to March 2018, table 5.1: Legal help and controlled legal representation matters started](#)' [accessed: 6 September 2018]. For the year ending March 2013, legal help was provided in 573,737 cases, compared with 140,091 in 2017/18, a fall of 76%.

<sup>149</sup> Legal Aid Agency (2018), 'Legal aid statistics tables, table 6.1: Civil representation, applications received in period and grant status'. For the year ending March 2013, legal aid for representation was granted for 157,409 cases, compared with 108,890 cases in 2017/18, a fall of 31%.

<sup>150</sup> From 573,737 cases in 2012/13 to 140,091 in 2017/18. Legal Aid Agency (2018), '[Legal aid statistics tables, table 6.1](#)' [accessed: 6 September 2018].

<sup>151</sup> EHRC (2018), '[The impact of LASPO on routes to justice](#)' [accessed: 6 September 2018].

<sup>152</sup> Joint Committee on Human Rights (2018), '[Enforcing human rights](#)', p. 13 [accessed: 30 July 2018].

<sup>153</sup> House of Commons (2018), '[Legal aid scheme: social security benefits: written question – 130690](#)' [accessed: 5 July 2018]. See also Durrant, J. (2018), '[Access denied – barriers to justice in the disability benefits system](#)'. Zacchaeus 2000 Trust [accessed: 11 July 2018].

The EHRC is also concerned about the barriers to accessing legal advice in discrimination claims presented by the mandatory Civil Legal Advice (CLA) gateway. The mandatory CLA gateway dealt with just over 25,000 discrimination cases between 2013/14 and 2016/17, but only 13,000 cases were referred to CLA specialists. Of these, 16 people were referred for face-to-face advice. In 2016/17, no discrimination cases were referred for face-to-face advice.<sup>154</sup> The EHRC has launched an inquiry examining the extent to which victims of discrimination are able to obtain access to justice through the provision of legal aid.<sup>155</sup>

Moreover, between 2012 and 2017, fewer than eight public funding certificates a year were granted under the discrimination category of work.<sup>156</sup> The Legal Aid Agency announced in 2018 that it would cancel the procurement process for its telephone gateway discrimination service from September 2018 following receipt of insufficient compliant tenders.<sup>157</sup>

## Relevant steps taken by UK governments

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### England and Wales

The UK Government review of LASPO is due to report by the end of 2018.<sup>158</sup> The EHRC has submitted a full response to the review, addressing the negative impact of LASPO on access to justice, the particular impacts on people sharing protected

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<sup>154</sup> *The Law Society Gazette* (2018), '[News focus: legal advice gateway to nowhere](#)'. See also House of Commons (2017), '[Legal aid scheme: telephone services: written question – 111874](#)'. [Both accessed: 5 July 2018].

<sup>155</sup> The EHRC's inquiry will examine:

- how discrimination cases are funded by legal aid
- how many individuals receive legal aid funding for discrimination claims, including representation or assistance with bringing a case in a court or tribunal, and how this compares with evidence of the number of individuals who seek advice about discrimination
- whether there are barriers to effective access to legal aid
- whether some individuals experience specific difficulties in accessing legal aid, for example due to language or literacy difficulties, or because of a protected characteristic
- the operation of the mandatory telephone gateway as the access point for most discrimination advice, and
- in light of the above, whether legal aid provides effective access to justice for individuals who complain of discrimination, and whether improvements could be made to reduce barriers and improve access to justice.

Further information about the inquiry, including the terms of reference, can be found at '[Legal aid for victims of discrimination: our inquiry](#)'.

<sup>156</sup> Ministry of Justice (2017), '[Legal aid statistics: July to September 2017](#)' [accessed: 5 July 2018].

<sup>157</sup> Legal Aid Agency (2018), '[Civil news: cancellation of Civil Legal Advice procurement](#)' [accessed: 5 July 2018].

<sup>158</sup> Ministry of Justice (June 2018), '[Post-implementation review of LASPO](#)' [accessed: 5 July 2018].

characteristics, including disabled people, and the effect on access to redress for human rights breaches and discrimination.<sup>159</sup>

In 2016, the UK Government announced a programme to modernise the courts in England and Wales, including measures such as ‘virtual hearings’ that take place over a video link, and online dispute resolution, for example in social security and child support hearings.<sup>160</sup> A number of proposals in the programme may have negative consequences for disabled people, including the introduction of video hearings, which may have a negative impact on people’s ability to participate in proceedings, and online resolution may compromise fairness and reduce opportunities for people to seek professional legal advice.<sup>161</sup>

Alongside the modernisation programme, the UK Government has proceeded with a series of court closures, including seven further closures confirmed in July 2018.<sup>162</sup> The EHRC has emphasised the lack of data and robust impact assessment to underpin these decisions, and raised concerns about the potential disproportionate negative impacts on certain groups, including people with mobility impairments and those with caring responsibilities.<sup>163</sup> The increased use of online processes is intended to mitigate these impacts.<sup>164</sup> However, many of these processes are not yet in place, and they may themselves disadvantage disabled people.

A revised edition of the Equal Treatment Bench Book has been published, including detailed practical guidance on both mental and physical disability and references to the CRPD.<sup>165</sup>

## Wales

In an effort to tackle the scarcity of legal advice in Wales, the Welsh Government has supported the development of advice services to provide frontline advice on issues that were previously in scope of legal aid. In 2018/19, the Welsh Government is

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<sup>159</sup> EHRC (September 2018), [‘Response to the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012’](#) [accessed: 6 September 2018].

<sup>160</sup> Lord Chancellor, Lord Chief Justice and Senior President of Tribunals (2016), [‘Transforming our justice system’](#). Ministry of Justice [accessed: 5 July 2018].

<sup>161</sup> EHRC (2018), [‘Inquiry response: Fit for the future: transforming the court and tribunal estate’](#) [accessed: 6 September 2018].

<sup>162</sup> Ministry of Justice and HM Courts and Tribunals Service (2018), [‘Government announces changes to court estate’](#). To date, the UK Government has closed more than 230 crown, county and magistrates courts; see [‘Response to Parliamentary question 136450’](#) [both accessed: 6 September 2018].

<sup>163</sup> EHRC (2018), see note 161; Gibbs, P. (2017), [‘Defendants on video – conveyor belt justice or a revolution in access?’](#) Transform Justice [accessed: 5 July 2018].

<sup>164</sup> UK Government (2018), [‘Consultation: Fit for the future: transforming the court and tribunal estate’](#) [accessed: 6 September 2018].

<sup>165</sup> Courts and Tribunals Judiciary (February 2018), [‘New edition of the Equal Treatment Bench Book launched’](#) [accessed: 5 July 2018].

planning to provide £5.97 million in grant funding to charity and voluntary sector organisations (including Citizens Advice Cymru, Shelter Cymru and Age Cymru), helping people across Wales to access free, independent advice on social welfare issues, including housing, debt and welfare benefits.<sup>166</sup>

## Scotland

The Scottish Government has announced plans to place existing non-statutory, appropriate adult services on a statutory footing.<sup>167</sup> The proposals focus on facilitating communication between vulnerable people (including, if appropriate, people with learning disabilities and mental health conditions) and the police. It does not extend to in-court support, including the distinct role of an intermediary. While welcoming the proposals, the EHRC has called on the Scottish Government to establish a statutory intermediary service or similar provisions for court proceedings at the earliest opportunity. In the meantime, EHRC considers that it should be made clear in police reports if an appropriate adult was present for an accused or witness interview, to allow the courts to put in place any appropriate measures required to ensure safeguards are provided for court proceedings.<sup>168</sup>

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<sup>166</sup> [National Assembly for Wales \(2018\), Plenary, 18 April](#) [accessed: 7 September 2018].

<sup>167</sup> Scottish Government (March 2018), '[Establishing a statutory appropriate adult service in Scotland, consultation document](#)' [accessed: 29 August 2018].

<sup>168</sup> EHRC (June 2018), '[Commission's response to the consultation on establishing a statutory appropriate adult service in Scotland](#)' [accessed: 29 August 2018].

## 7. Involving disabled people and their organisations (articles 4(3) and 33(3))

### **CRPD Committee inquiry recommendations 2016, paragraph 114 (g):**

‘Actively consult and engage with persons with disabilities through their representative organizations and give due consideration to their views in the design, implementation, monitoring and evaluation of any legislation, policy or programme action related to the rights addressed in the present report.’

### **Summary of progress**

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There have been some promising developments in terms of the UK and devolved governments’ stated intentions for improving the involvement of disabled people and their organisations. However, these intentions have not yet been realised and action is still required to ensure the CRPD Committee’s recommendations are implemented effectively.

### **Key concerns**

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#### **UK**

There is a continued lack of action from the UK and devolved governments on the CRPD Committee’s recommendations. This includes setting up systems that will ensure that disabled people and their organisations are involved in the design, implementation, and monitoring and evaluation of legislation, policy or programmes that affect their lives.

It remains unclear how the new Inter-Ministerial Group on Disability and Society will work with disabled people and their organisations, and UKIM, to promote and monitor implementation of UN CRPD. It is particularly concerning that the UN CRPD’s requirement to effectively involve disabled people and their organisations is

not specifically reflected in the inter-ministerial group's terms of reference. Nor do the terms of reference refer to the CRPD or the CRPD Committee's recommendations.<sup>169</sup>

## Relevant steps taken by UK governments

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### UK

The Office for Disability Issues (ODI) stated in its State Party report in September 2018 that it had increased its efforts to engage with disabled people and their organisations in recent months, including by creating a new role of stakeholder manager.<sup>170</sup> However, this does not seem to have translated into a publicly available engagement plan or any concrete activities to date.

### Northern Ireland

The draft programme for government indicator 42<sup>171</sup> includes a commitment by the Northern Ireland Executive to involve disabled people in designing a structure for monitoring the implementation of the plan, including the setting up of a central regional disability forum involving disabled people. However, there is no evidence available in the public domain of progress towards realising this commitment. The Department for Communities has acknowledged that devolved departments are limited in what they can do without ministers in place to provide approval for new policies and additional resources.<sup>172</sup>

### Scotland

The Scottish Government delivery plan for UN CRPD includes welcome commitments to involve disabled people and their organisations in the delivery and measurement of the actions in the delivery plan<sup>173</sup>. However, progress on realising these commitments is unclear.

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<sup>169</sup> ODI (2018), see note 7.

<sup>170</sup> ODI (2018), '[Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland: initial government response](#)' [accessed: 7 September 2018].

<sup>171</sup> Northern Ireland Executive (2017), '[Draft delivery plan for programme for government indicator 42, average life satisfaction score of people with disabilities](#)' [accessed: 14 September 2018].

<sup>172</sup> Meeting between Department for Communities and DPOs, Stormont, 4 September 2018.

<sup>173</sup> Scottish Government (2016), '[A fairer Scotland for disabled people](#)', p. 39 [accessed: 29 August 2018].

## 8. Dissemination of concluding observations and inquiry findings (article 36)

### CRPD Committee concluding observations 2017, paragraph 77:

‘The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and organizations of persons with disabilities, and to persons with disabilities themselves and members of their families, in national and minority languages, including sign language, and in accessible formats, including Easy Read, and to make them available on the government website on human rights.’

### Summary of progress

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There has been little progress regarding the UK and devolved governments’ dissemination of the CRPD Committee’s concluding observations and inquiry findings.

### Key concerns

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#### UK

Dissemination of the CRPD Committee’s concerns and recommendations by the UK Government and efforts to raise awareness have been minimal. Neither the concluding observations nor the inquiry report have been published on the UK Government’s website, only its own State Party reports. The CRPD Committee’s reports have also not been made available in accessible formats, including easy read, as requested by the CRPD Committee.

The EHRC has published the concluding observations and reproduced them in accessible formats.<sup>174</sup>

UKIM's experience is that the UK governments tend to put more energy into reporting to, and examination by, the UN, and less into the follow-up of UN concluding observations. Therefore, one of UKIM's continuing challenges is to develop and maintain momentum for implementation of UN human rights treaties, including the CRPD.

## Scotland

The EHRC and SHRC are unaware of any efforts by the Scottish Government to disseminate the concluding observations. No information about the CRPD Committee's review of the UK or the concluding observations is available on the 'Disabled people' section of the Scottish Government website.<sup>175</sup>

The EHRC and SHRC asked the Scottish Government to participate in a conference about what deaf and disabled people think the Scottish Government needs to do next to implement the CRPD Committee's recommendations. However, the Government was unable to participate or provide a statement explaining how it was responding to the concluding observations. A report setting out the views of over 100 deaf and disabled people attending the conference about what needs to happen next has been sent to the Scottish Government Minister with responsibility for disability.<sup>176</sup>

## New evidence

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### Scotland

In January 2018, the Scottish Parliament Equalities and Human Rights Committee (EHRiC) launched a call for evidence as part of its inquiry into human rights and the Scottish Parliament.<sup>177</sup> The EHRC and SHRC recommended that:<sup>178</sup>

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<sup>174</sup> EHRC (January 2018), '[How well is the UK performing on disability rights?](#)' [accessed: 3 August 2018].

<sup>175</sup> Scottish Government, '[Disabled people](#)' [accessed: 29 August 2018].

<sup>176</sup> EHRC (2018), '[Disability rights: What's next for Scotland? report](#)' [accessed: 7 Sept 2018].

<sup>177</sup> Scottish Parliament, '[Human rights and the Scottish Parliament](#)' [accessed: 29 August 2018].

<sup>178</sup> EHRC (March 2018), '[Submission from the Equality and Human Rights Commission](#)'. SHRC (March 2018), '[Submission from the Scottish Human Rights Commission: Human rights and the Scottish Parliament inquiry](#)' [both accessed: 29 August 2018].

- EHRiC scrutinises the Scottish Government’s human rights treaty reports and engages with treaty bodies by sending, where appropriate, representatives and holding debates on particular treaty bodies, and
- EHRiC and other relevant Scottish Parliament committees use UN concluding observations and recommendations as a way to track progress towards the Scottish Government’s adoption of, and compliance with, international human rights standards.

## Relevant steps taken by UK governments

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### UK

The UK Government has recently established an Inter-Ministerial Group on Disability and Society. However, there is no specific reference to the UN CRPD or the CRPD Committee’s recommendations. There is also no specific reference to ensuring the effective participation and involvement of disabled people and their organisations. In addition, the listed membership of this group is limited to the UK Government. This overlooks the need for a coordinated approach to implementation of CRPD across the UK governments. This is particularly important given that the group’s stated remit focuses on employment, sport, transport and culture, which are all, to some degree, devolved to Northern Ireland, Scotland and Wales. The terms of reference state that ‘other ministers and officials will be invited as and when required’, but it is not clear if this extends to the devolved administrations and the extent of such a role.<sup>179</sup>

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<sup>179</sup> ODI (2018), see note 7.

## Annex I: UKIM's recommendations

UKIM reiterates its recommendations made to the CRPD Committee during the examination process in August 2017. This list includes all recommendations relevant to the issues covered in this report. Where necessary, these recommendations have been updated to reflect changes in the policy context and the emergence of new evidence.

### The right to live independently in the community (article 19) – independent living funding

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#### **UK-wide recommendations**

The UK Government should act upon the recommendation of the Work and Pensions Select Committee to set out a clear plan for identifying where new Employment and Support Allowance work-related activity group claimants have additional, unavoidable living costs relating to their condition, and ensure a financial support package is in place to adequately support all new claimants looking for, and moving into, work.

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

#### **England recommendations**

The UK Government must take steps to ensure compliance with CRPD article 19 where it has delegated responsibility for independent living funding to local authorities in England. These steps should include:

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

### **Updated Wales recommendations**

The Welsh Government should ensure that protecting disabled people's right to independent living is central to deciding if and how to merge the Supporting People programme with other budget lines from 2020.

The Welsh Government should:

- produce a national strategy to ensure there is an adequate supply of houses built to inclusive design standards and a review of the way that building standards are enforced
- improve the way that data are collected and shared, both on the requirements of disabled people and on the number of adaptable homes already built
- ensure provision of specialist support and information services to match homes to the people who need them and to ensure that they are suitably adapted, and
- provide increased specialist disability advice and advocacy services to enable people to maintain their housing and right to independent living.

### **Northern Ireland recommendations**

The Northern Ireland Executive should consider:

- undertaking research into the extent to which disabled people with substantial needs, who are not existing Independent Living Fund users, are having their needs met through Self-directed support and direct payments provisions
- reopening the Independent Living Fund to new entrants.

## **The right to an adequate standard of living and social protection (article 28) – poverty, material deprivation and food insecurity**

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### **UK-wide recommendations**

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

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

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

### **Wales recommendations**

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

## **The right to an adequate standard of living and social protection (article 28) – impact of social security reforms**

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### **Updated UK-wide recommendations**

The UK Government should monitor and publish the impact of welfare reforms on disabled people. This should include assessments of the cumulative impact of tax and social security changes and public spending reductions on disabled people.

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

To mitigate some of the adverse impacts on disabled people, the UK Government should:

- uprate all benefits in line with inflation and review the level of benefits to ensure this meets adequate living standards
- reinstate the level of work allowance to the 2012 level
- reinstate the severe and enhanced disability premiums under Universal Credit
- provide increased support to disabled people placed in the Employment and Support Allowance work-related activity group that is equivalent to the support group and acknowledges the additional, unavoidable living costs relating to their condition
- all full-time disabled students who receive DLA or PIP should be eligible for Universal Credit on the grounds of being treated as having a limited capability for work
- carry out an equality impact assessment of the conditionality and sanctions system on claimants to ensure that sanctions are not disproportionately applied, and that conditionality is reasonable and based on flexibility of easements, specifically for lone parent families, ethnic minority groups and disabled people
- introduce publicly available service standards for the social security system that set out the rights of claimants, are fair and accessible, and measured and reported on
- ensure that work coaches are trained to deliver tailored employment support, providing evidence of the steps taken to ensure that the specific needs of lone parents and disabled people are being met.

### **Scotland recommendations**

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

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

### **Northern Ireland recommendations**

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

## The right to work and employment (article 27) – employment gaps and barriers

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### Updated UK-wide recommendations

The UK and devolved governments should evaluate how well employment support programmes help disabled people find and stay in work, and take steps to improve their effectiveness. This should include a regular and transparent evaluation of progress made on the UK Government's 'Improving lives: the future of work, health and disability' strategy (November 2017) to ensure progress is seen as a shared, long-term, priority objective across all relevant Government departments.

The UK Government should:

- introduce interim targets and a statutory reporting requirement on its commitment to a target of one million more disabled people in work over the next 10 years
- report regularly on progress, including by impairment group, and identify steps if progress is insufficient.

The UK Government should ensure that changes to the Access to Work programme comply with article 27 by:

- widening support for mental health and complex health or medical conditions
- monitoring any adverse impact on employment opportunities, for disabled people generally and for people with sensory impairments specifically
- introducing mitigations such as additional funding flexibilities, and extending transition arrangements, and
- putting in place a publicity programme for the Access to Work scheme among employers to increase awareness.

To help remove barriers to recruitment and retention of disabled people, the UK Government should build training on disability law and providing reasonable adjustments into new models of support resulting from the 'Improving lives' strategy.

### Wales recommendations

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

### Scotland recommendations

The Scottish Government should support local authorities and integrated health and social care boards to meet their obligation to provide employment support services

under sections 26 and 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

### **Northern Ireland recommendations**

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

## **The right to work and employment (article 27) – pay gap**

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### **Updated UK-wide recommendations**

By April 2019 UK governments should:

- provide clear and country-appropriate guidance on the classification system to be used for disability monitoring by all types of organisations and practical guidance for different types/sizes of employers on how to collect, report on and use the data.

Once consistent classification, collection and reporting systems are in place to support employers to use employment data effectively, the UK Government should:

- require private, voluntary and listed public sector employers with 250+ employees to monitor and report on disability in recruitment, retention and progression within the workplace by April 2020
- require private, voluntary and listed public employers to publish a narrative and action plan with time-bound targets, informed by analysis of their disability data. This analysis should help explain the factors underlying the data and focus on how to make substantive improvements to the workplace.

## **Prejudice and negative attitudes (article 8)**

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### **UK-wide recommendations**

The UK and devolved governments should:

- resource long-term positive awareness-raising campaigns, training and education to address prejudice and negative attitudes towards all disabled people, including those with mental health conditions and those claiming social security benefits

- ensure that government communications do not fuel prejudicial views, particularly with regard to the rights of disabled people claiming social security benefits, and
- ensure that there is awareness of the CRPD among disabled people, public service providers, and throughout society.

## **Disability-motivated hate crime, hostility and harassment (articles 8 and 16)**

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### **UK-wide recommendations**

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

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

### **Updated England and Wales recommendations**

The UK Government should:

- undertake without delay a full-scale review of the aggravated offences and enhanced sentencing provisions to ensure parity for all characteristics protected under hate crime law
- monitor the use of sentencing guidelines to assess consistency in sentencing across all hate crime strands
- conduct a review of the provision of third-party reporting of hate crime in England and Wales; evaluate the impact and sustainability of provision; highlight geographical and thematic gaps; and ensure third-party and police recording systems are consistent
- ensure the police, Crown Prosecution Service and probation services adopt and publish a single, clear definition of a disability hate crime and communicate it effectively to the public and staff.

### **Scotland recommendations**

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

## Access to justice (articles 12 and 13) – legal aid and advice

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### Updated England and Wales recommendations

In its review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in 2018, the UK Government should consider the full range of evidence available on the impact of legal aid changes on people with certain protected characteristics. It should identify whether there have been disproportionate impacts on particular groups that may have limited their access to justice, and the availability of legal advice from non-government organisations, and take effective steps to mitigate those impacts. Those responsible for the review should seek input from disabled people, wider civil society and the EHRC.

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

### Scotland recommendations

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

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

## Access to justice (articles 12 and 13) – court and employment tribunals

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### Updated England and Wales recommendations

In light of the Supreme Court judgment on employment tribunal fees and the fundamental rights underpinning the court's reasoning, the UK Government should not introduce any new barriers to accessing employment tribunals, and should reaffirm its commitment to ensuring equal access to justice for all. The UK Government should ensure that all those who paid employment tribunal fees are

reimbursed, and take steps to ensure anyone who was deterred from bringing claims because of fees has not been disadvantaged.

We also recommend that the UK Government:

- does not proceed with any court closures until it has collected the evidence about court users necessary to conduct a meaningful equality impact assessment, and has conducted that assessment
- conducts a thorough assessment of the digital literacy of court users in order to determine the nature and content of the support required to ensure access to justice in the context of increased digitisation, and
- establishes a clear evidence base setting out the impacts of virtual processes (including virtual hearings and online court processes) and the equality and human rights issues that need to be addressed before any new measures are introduced or existing pilots are extended.

### **Scotland recommendations**

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

## **Access to justice (articles 12 and 13) – awareness of the CRPD and reasonable accommodations**

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### **UK-wide recommendations**

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

- the CRPD, including its principles and the jurisprudence of the CRPD Committee
- reasonable adjustments to ensure access to justice for disabled people.

## **Access to justice (articles 12 and 13) – disability discrimination in schools**

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### **UK-wide recommendations**

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

## **Access to justice (articles 12 and 13) – support and protection in criminal justice system in Scotland**

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### **Scotland recommendations**

The Scottish Government should:

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

## Annex II: Relevant UN recommendations

### The right to live independently in the community (article 19)

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#### Relevant concluding observations

45. The Committee recommends that the State party, in line with the Committee's general comment No. 5 (2017) on living independently and being included in the community and the Committee's report on its inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out under article 6 of the Optional Protocol to the Convention:

- a) Recognize the right to living independently and being included in the community as a subjective right, recognize the enforceability of all its elements, and adopt rights-based policies, regulations and guidelines to ensure implementation;
- b) Conduct periodic assessments in close consultation with organizations of persons with disabilities to address and prevent the negative effects of policy reforms through sufficiently funded and appropriate strategies in the area of social support and living independently;
- c) Provide adequate, sufficient earmarked funding to local authorities and administrations, including the devolved governments, to be able to continuously allocate adequate resources allowing persons with disabilities to live independently and be included in the community and to exercise their right to choose their place of residence and where and with whom to live;
- d) Set up a comprehensive plan, developed in close collaboration with organizations of persons with disabilities, aimed at the deinstitutionalization of persons with disabilities, and develop community-based independent living schemes through a holistic and cross-cutting approach, including education, childcare, transport, housing, employment and social security;
- e) Allocate sufficient resources to ensure that support services are available, accessible, affordable, acceptable, adaptable and are sensitive to different living conditions for all persons with disabilities in urban and rural areas.

## Relevant inquiry recommendations

- (b) Ensure that any intended measure of the welfare reform is rights-based, upholds **the** human rights model of disability and does not disproportionately and/or adversely affect the rights of persons with disabilities to independent living, an adequate standard of living and employment. To prevent adverse consequences, the State party should carry out human rights-based cumulative impact assessments of the whole range of intended measures that would have an impact on the rights of persons with disabilities;
- (c) Ensure that: any intended legislation and/or policy measure respects the core elements of the rights analysed in the present report; persons with disabilities retain their autonomy, choice and control over their place of residence and with whom they live; they receive appropriate and individualized support, including through personal assistance, and have access to community-based services on an equal basis with others; they have access to security social schemes that ensure income protection, including in relation to the extra cost of disability, that is compatible with an adequate standard of living and ensure their full inclusion and participation in society; and they have access and are supported in gaining employment in the open labour market on an equal basis with others;
- (e) Introduce all adjustments necessary to make all information, communications, administrative and legal procedures in relation to social security entitlements, independent living schemes and employment/unemployment-related support services fully accessible to all persons with disabilities;
- (j) Set up a mechanism and a system of human rights-based indicators to permanently monitor the impact of the different policies and programmes relating to the access and enjoyment by persons with disabilities of the right to social protection and an adequate standard of living, the right to live independently and be included in the community and the right to work, in close consultation with persons with disabilities and their representative organizations in all regions and countries that constitute the State party;
- (i) Ensure that, in the implementation of legislation, policies and programmes, special attention is paid to persons with disabilities living with a low income or in poverty and persons with disabilities at higher risk of exclusion, such as persons with intellectual, psychosocial or multiple disabilities and women, children and older persons with disabilities. Those measures should be put in place within contributive and non-contributive regimes.

## The right to an adequate standard of living and social protection (article 28)

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### Relevant concluding observations

59. The Committee recommends that the State party, in close collaboration with organizations of persons with disabilities across all territorial entities, in line with the Committee's report on its inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out under article 6 of the Optional Protocol to the Convention, guided by article 28 of the Convention and implementing target 10.2 of the Sustainable Development Goals:

- a) Introduce, adopt and implement legislative frameworks to ensure that social protection policies and programmes across the State party secure income levels for all persons with disabilities and their families, by taking into account the additional costs relating to disability, and ensuring that persons with disabilities are able to exercise their parental responsibilities. The State party must ensure that members of the new Employment and Support Allowance work-related activity group have access to full compensation of disability-related costs;
- b) Carry out a cumulative impact assessment, based on disaggregated data, of the recent and forthcoming reforms of the social protection system for persons with disabilities, and in close collaboration with organizations of persons with disabilities define, implement and monitor measures to tackle retrogression in their standard of living and use the cumulative impact assessment as a basis for policy development across the State party;
- c) Repeal the Personal Independence Payment (Amendment) Regulations of 2017 and ensure that eligibility criteria and assessments to access Personal Independence Payments, Employment Support Allowance and Universal Credit are in line with the human rights model of disability;
- d) Ensure that the budget allocation is sufficient for local authorities to meet their responsibilities regarding assistance for persons with disabilities, and extend support packages to mitigate the negative impacts of social security reform in Northern Ireland;
- e) Conduct a review of the conditionality and sanction regimes concerning the Employment and Support Allowance, and tackle the negative consequences on the mental health and situation of persons with disabilities.

### Relevant inquiry recommendations

- (a) Conduct a cumulative impact assessment of the measures adopted since 2010, referred to in the present report, on the rights to independent living and to be included in the community, social protection and employment of persons with disabilities. The State party should ensure that such assessment is rights-based and meaningfully involves persons with disabilities and their representative organizations;
- (b) Ensure that any intended measure of the welfare reform is rights-based, upholds the human rights model of disability and does not disproportionately and/or adversely affect the rights of persons with disabilities to independent living, an adequate standard of living and employment. To prevent adverse consequences, the States party should carry out human rights-based cumulative impact assessments of the whole range of intended measures that would have an impact on the rights of persons with disabilities;
- (c) Ensure that: any intended legislation and/or policy measure respects the core elements of the rights analysed in the present report; persons with disabilities retain their autonomy, choice and control over their place of residence and with whom they live; they receive appropriate and individualized support, including through personal assistance, and have access to community-based services on an equal basis with others; they have access to security social schemes that ensure income protection, including in relation to the extra cost of disability, that is compatible with an adequate standard of living and ensure their full inclusion and participation in society; and they have access and are supported in gaining employment in the open labour market on an equal basis with others;
- (d) Ensure that public budgets take into account the rights of persons with disabilities, that sufficient budget allocations are made available to cover extra costs associated with living with a disability and that appropriate mitigation measures, with appropriate budget allocations, are in place for persons with disabilities affected by austerity measures;
- (e) Introduce all adjustments necessary to make all information, communications, administrative and legal procedures in relation to social security entitlements, independent living schemes and employment/unemployment-related support services fully accessible to all persons with disabilities;
- (j) Set up a mechanism and a system of human rights-based indicators to permanently monitor the impact of the different policies and programmes relating to the access and enjoyment by persons with disabilities of the right to social protection and an adequate standard of living, the right to live independently and be included in the community and the right to work, in close consultation with

persons with disabilities and their representative organizations in all regions and countries that constitute the State party;

- (i) Ensure that, in the implementation of legislation, policies and programmes, special attention is paid to persons with disabilities living with a low income or in poverty and persons with disabilities at higher risk of exclusion, such as persons with intellectual, psychosocial or multiple disabilities and women, children and older persons with disabilities. Those measures should be put in place within contributive and non-contributive regimes.

## The right to work and employment (article 27)

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### Relevant concluding observations

57. The Committee recommends that the State party, in close collaboration with organizations of persons with disabilities, and in line with the Committee's report on its inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out under article 6 of the Optional Protocol to the Convention:

- a) Develop and decide upon an effective employment policy for persons with disabilities aimed at ensuring decent work for all persons with disabilities, bearing in mind the State party's target of 1 million jobs for persons with disabilities, and ensure equal pay for work of equal value, focusing especially on women with disabilities, persons with psychosocial and/or intellectual disabilities and persons with visual impairments, and monitor those developments;
- b) Ensure that reasonable accommodation is provided to all persons with disabilities who require it in the workplace, that regular training on reasonable accommodation is available to employers and employees without disabilities, and that dissuasive and effective sanctions are in place in cases of denial of reasonable accommodation;
- c) Ensure that the legal and administrative requirements of the process to assess working capabilities, including the Work Capability Assessment, are in line with the human rights model of disability, that those who conduct the assessments are qualified and duly trained in that model, and that the assessments take into consideration work-related as well as other personal circumstances. The State party must ensure that the adjustments and support necessary to access work, as well as financial support, are provided and that they are not subject to sanctions or conditional upon carrying out job seeking activities;

- d) Withdraw its reservation to article 27 of the Convention;
- e) Bear in mind the links between article 27 of the Convention and target 8.5 of the Sustainable Development Goals.

### **Relevant inquiry recommendations**

- (a) Conduct a cumulative impact assessment of the measures adopted since 2010, referred to in the present report, on the rights to independent living and to be included in the community, social protection and employment of persons with disabilities. The State party should ensure that such assessment is rights-based and meaningfully involves persons with disabilities and their representative organizations;
- (b) Ensure that any intended measure of the welfare reform is rights-based, upholds the human rights model of disability and does not disproportionately and/or adversely affect the rights of persons with disabilities to independent living, an adequate standard of living and employment. To prevent adverse consequences, the State party should carry out human rights-based cumulative impact assessments of the whole range of intended measures that would have an impact on the rights of persons with disabilities;
- (c) Ensure that: any intended legislation and/or policy measure respects the core elements of the rights analysed in the present report; persons with disabilities retain their autonomy, choice and control over their place of residence and with whom they live; they receive appropriate and individualized support, including through personal assistance, and have access to community-based services on an equal basis with others; they have access to security social schemes that ensure income protection, including in relation to the extra cost of disability, that is compatible with an adequate standard of living and ensure their full inclusion and participation in society; and they have access and are supported in gaining employment in the open labour market on an equal basis with others;
- (e) Introduce all adjustments necessary to make all information, communications, administrative and legal procedures in relation to social security entitlements, independent living schemes and employment/unemployment-related support services fully accessible to all persons with disabilities;
- (j) Set up a mechanism and a system of human rights-based indicators to permanently monitor the impact of the different policies and programmes relating to the access and enjoyment by persons with disabilities of the right to social protection and an adequate standard of living, the right to live independently and be included in the community and the right to work, in close consultation with

persons with disabilities and their representative organizations in all regions and countries that constitute the State party;

- (i) Ensure that, in the implementation of legislation, policies and programmes, special attention is paid to persons with disabilities living with a low income or in poverty and persons with disabilities at higher risk of exclusion, such as persons with intellectual, psychosocial or multiple disabilities and women, children and older persons with disabilities. Those measures should be put in place within contributive and non-contributive regimes.

## **Prejudice and negative attitudes (articles 8 and 16)**

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### **Relevant inquiry recommendations**

(h) Take appropriate measures to combat any negative and discriminatory stereotypes or prejudice against persons with disabilities in public and the media, including that dependency on benefits is in itself a disincentive of employment; implement broad mass media campaigns, in consultation with organizations representing persons with disabilities, particularly those affected by the welfare reform, to promote them as full rights holders, in accordance with the Convention; and adopt measures to address complaints of harassment and hate crime by persons with disabilities, promptly investigate those allegations, hold the perpetrators accountable and provide fair and appropriate compensation to victims.

## **Access to justice (articles 12 and 13)**

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### **Relevant inquiry recommendations**

(f) Ensure access to justice, by providing appropriate legal advice and support, including through reasonable and procedural accommodation for persons with disabilities seeking redress and reparation for the alleged violation of their rights, as covered in the present report.

## **Involving disabled people and their organisations (articles 3 and 4)**

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### **Relevant concluding observations**

All – ‘... in close collaboration with organizations of persons with disabilities’.

### **Relevant inquiry recommendations**

- (g) Actively consult and engage with persons with disabilities through their representative organizations and give due consideration to their views in the design, implementation, monitoring and evaluation of any legislation, policy or programme action related to the rights addressed in the present report.
- (j) Set up a mechanism and a system of human rights-based indicators to permanently monitor the impact of the different policies and programmes relating to the access and enjoyment by persons with disabilities of the right to social protection and an adequate standard of living, the right to live independently and be included in the community and the right to work, in close consultation with persons with disabilities and their representative organizations in all regions and countries that constitute the State party.

## **Dissemination of concluding observations and inquiry findings (article 36)**

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### **Relevant concluding observations**

77. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and organizations of persons with disabilities, and to persons with disabilities themselves and members of their families, in national and minority languages, including sign language, and in accessible formats, including Easy Read, and to make them available on the government website on human rights.

### **Relevant inquiry recommendations**

(k) Respond to the present report within the time limit prescribed under the Optional Protocol, widely disseminate the Committee's findings and recommendations and provide appropriate follow-up to the recommendations of the present report, including during the consideration of the State party's initial report before the Committee.

## Contacts

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