

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

Alternative report summary version - Great Britain

Led by Inclusion Scotland, Disability Rights UK and Disability Wales



1.	About this report	3
1.1.	Structure	3
1.2.	How the report was produced	4
2.	Summary of Top Twenty Issues of Concern	5

1. About this report

This report is a summary of an independent assessment of implementation of the United Nations Convention on the Rights of Persons with Disabilities in Great Britain published in January 2017.

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

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

This version is a summary of the Top Twenty Issues of Concern.

1.1. Structure

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

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

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

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

⁴ Neil Crowther is an independent consultant

⁵ Gary Bourlet, People First England, Stephen Harris, Dewis Centre for Independent Living, Dr Simon Hoffman, University of Swansea, Peter Mittler, Dementia Alliance International, Professor Mark Priestly, University of Leeds, Lucy Series, University of Cardiff, George Szmukler, Kings College London, Jane Young

⁶ People First Scotland, Glasgow Centre for Inclusive Living, Lothian Centre for Inclusive Living, Self-Directed Support Scotland, Glasgow Disability Alliance, the Scottish Council on Deafness, the British Deaf Association, Voices of Experience, and Professor Nicholas Watson from the University of Glasgow

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

governments of Wales and Scotland. The scope of devolution to Scotland and Wales is explained in an annex to the main report.

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

1.2. How the report was produced

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

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

Terminology

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

2. Summary of Top Twenty Issues of Concern

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

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

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

We look forward to the Committee's further scrutiny of the UK Government during its examination of the United Kingdom in 2017.

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

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

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

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

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

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

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

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

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

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

2.5. Measures to achieve de facto equality are flawed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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