

**RESPONSE TO
OFMDFM CONSULTATION
ON
“A STRATEGY TO IMPROVE THE
LIVES OF DISABLED PEOPLE
2012 – 2015”**

July 2012

This submission has been drafted jointly by the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission in furtherance of their role as the “Independent Mechanism” in Northern Ireland to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD).



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Executive Summary

1. The Equality Commission and the Northern Ireland Human Rights Commission are jointly designated as the “Independent Mechanism” in Northern Ireland to promote, protect and monitor the implementation the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
2. We welcome the Northern Ireland Executive’s commitment to develop a Disability Strategy to challenge the wide range of barriers faced by people with disabilities in Northern Ireland and the recognition given to the UNCRPD as the framework under-pinning the Executive’s approach to addressing these.
3. However, we are concerned that the strategy does not appear to address the full range of obligations placed upon Government by the UNCRPD. The Independent Mechanism encourages Government to adopt a ‘human rights based’ approach which fully acknowledges that if something is necessary for a person to live in dignity, then it is a right that can be claimed. Persons with disabilities must be viewed as holders of rights rather than as objects of welfare.

Priorities for Intervention

4. In summary, with regards to the substantive focus on improving the lives of people with disabilities in Northern Ireland we would recommend that the strategy should additionally commit the Executive to:
 - **reform disability equality legislation** to provide stronger protection for people with disabilities when accessing services, transport and the built environment, schools, rented accommodation and in employment¹ by:

¹ Equality Commission for Northern Ireland (March 2012): *Strengthening Protection for Disabled People Proposals for Reform (Full Report)*, available at http://www.equalityni.org/archive/pdf/Strengthening_protection_for_disabled_people0312.pdf

- simplifying and bringing consistency to the legislation;
 - improving protection against different types of discrimination, taking account of developments in case law;
 - updating the definition of disability to reflect the social model and removing the list of capacities;
 - providing protection for carers of people with disabilities and those perceived as being disabled.
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- **deliver awareness raising initiatives** that reflect the diversity of disability issues and **maximise the participation of those with disabilities in society**, including:
 - promoting positive attitudes and awareness of rights;
 - challenging negative attitudes, stereotypes and prejudice;
 - maximising the participation of people with disabilities in society and in decision making.
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- further **address the barriers experienced by people with disabilities trying to access justice** including:
 - specific consideration of the rights of persons with mental or intellectual impairments; alongside further detailed clarification on how the proposed reforms to mental capacity and health law will be taken into account within the Strategy;
 - reviewing and strengthening measures to reduce the level of hate crime;
 - ensuring the availability of appropriate protections for disabled victims and witnesses, who because of their disability, experience difficulty in giving evidence;
 - ensuring liaison between the Departments of Education and Justice so as to guarantee that the practices and procedures of SENDIST do not restrict access to justice for disabled children and young people.

- **improve further the accessibility of public services, information, housing and transport²**, including:
 - ongoing investment and support for people with disabilities to live in affordable, accessible accommodation;
 - information to be produced in a more accessible manner, alongside the need for data to better reflect the lives and experiences of people with disabilities living in Northern Ireland;
 - ongoing focus and investment to deliver accessible transport strategy and to ensure regular disability equality and general awareness training for transport providers;
 - a strategic approach to addressing the requirements of people with speech, language and communication needs.

- **Ensure effective delivery of independent living³ and Transitions to adulthood:**
 - implementation of key strategies including the Bamford Review of Mental Health and the Physical and Sensory Disability Strategy;
 - development and resourcing of coordinated, person-centric, transition services across Northern Ireland;
 - appropriate provisions to promote and protect the human rights of residents in Nursing Homes, including guidance on the use of restraint;
 - account to be taken of the full range of circumstances of disabled people - including those with no or limited access to public funds and/or subject to immigration controls;
 - legislative reform to allow disability-related adjustments to the common parts of let residential premises.

² Equality Commission for Northern Ireland (April 2012): *Response to the Department of Regional Development's Fourth Accessible Transport Strategy Draft Action Plan (ATS) 2012-2015*. Available at: <http://www.equalityni.org/archive/pdf/ATSFinalResponseApril2012.pdf>

³ Equality Commission for Northern Ireland (2011): *Commission Evidence to the Joint Committee on Human Rights – Inquiry into the implementation of the right of disabled people to independent living as guaranteed by Article 19, UN Convention on the Rights of Persons with Disabilities*. Available at:

http://www.equalityni.org/archive/word/IMNI_Joint_Response_JCHR270411.doc

- **promote access to education and sustainable employment, particularly in the context of the economic downturn⁴**, including measures to ensure:
 - an approach to Special Educational Needs⁵ in line with the UNCRPD;
 - retention of people with disabilities already in employment and opportunities for people with complex disabilities to find employment;
 - people with disabilities do not incur unintended financial penalties in making the transition from unemployment / benefits to employment;
 - full consideration to Article 27 of the UNCRPD, including the requirement to promote opportunities for self-employment and entrepreneurship.

- **support measures for carers and recognition of the role they play in contributing to the quality of life of people with disabilities**, including:
 - explicit consideration of the needs of the full range of carers, including the specific needs of young carers;
 - develop of strategic priorities which take into account measures already adopted to support carers in GB and elsewhere e.g. training for GPs; respite care; health checks etc.

- **develop a new strategic priority in relation to Health & Social Care**, to:
 - ensure that such a priority fully reflects the ‘social model’;
 - ensure that people with disabilities who require acute and specialist services enjoy the rights set out in the UNCRPD;

⁴ Equality Commission for Northern Ireland (2010): *Employment Inequalities in an Economic Downturn*. Available at:

<http://www.equalityni.org/archive/pdf/EconDownturnSummaryReport.pdf>

⁵ Equality Commission for Northern Ireland (2012): *Response to Department of Education consultation on the Review of Special Educational Needs and Inclusion*.

<http://www.equalityni.org/archive/pdf/ECNISENAdditionalViewsOnReviewProposals060712.pdf>

- ensure that the DHSSPS outline proposal option to use disability benefits to further subsidise future care provision does not limit the degree of choice and control people with disabilities have to manage their care and support requirements;
 - ensure that the regulatory and policy framework on access to publicly funded medical care complies with the UNCRPD - including for those with no or limited access to public funds and/or subject to immigration controls.
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- **develop mitigating measures to any adverse impacts of welfare reform** to ensure that people with disabilities are able to live independently and have an adequate standard of living and social protection. For example:
 - address concerns regarding the higher qualification criteria for the Disability Living Allowance (DLA) equivalent Personal Independence Payment (PIP)⁶;
 - ensure that the experiences faced by people with disabilities through the implementation of the ATOS assessment scheme for ESA and DLA (and the subsequent very high percentage of successful appeals for those refused DLA) is not replicated for the implementation of PIP;
 - address annual shortfalls in meeting assessed needs for social housing for disabled people;
 - take account of the full range of circumstances of disabled people - including those with no or limited access to public funds and/or subject to immigration control.

Delivering an Effective Strategy

5. With regards to the design and delivery of the strategy itself, we recommend that the Executive:

⁶ Equality Commission for Northern Ireland (2011): *Commission response to DSD consultation on Personal Independence Payment*. Available at: http://www.equalityni.org/archive/word/ECNIResponse_DSDPIPAssessmentThresholds_v0kFinal_020512.docx

- **revises both the ‘vision’ and ‘purpose’ of the Strategy to reflect more clearly the intent to fulfil the Executive’s obligations under UNCRPD.**
- ensures that the strategy sets out **how the Executive intends to contribute to the delivery of the full range of obligations placed on the State under the UNCRPD**, with any prioritisation of key strategic priorities on the basis of identifying those that will have the greatest positive impact on people with disabilities including those identified by people with disabilities as necessary for the implementation of the UNCRPD;
- **secures the pro-active, effective participation of people with disabilities**, including disabled children and young people, in the implementation of the Strategy and Action Plan, and in other Government Policies;
- **explicitly allocates appropriate resources** to deliver the strategy;
- **develops an action plan and monitoring framework**, including targets that are specific, measurable, achievable, realistic and time-bound, so as to deliver **significant positive impacts** for people with disabilities;
- **collect sufficient data relating specifically to disability in Northern Ireland** and publish it in an appropriately disaggregated and accessible format to ensure the effective design and monitoring of the strategy;
- **identifies explicit governance and delivery mechanisms**, including explicit **responsibility** for leading on the delivery of the specific elements of the strategy and structures to co-ordinate actions by Departments with a role in promoting and protecting the rights of people with disabilities and hold them accountable for progress against strategic targets;
- revises a number of the Strategic Priorities that are currently worded in a way that is too general and/or aspirational, so that there is a **clearer focus and identification of specific and meaningful linked actions**;

- ensures that the strategy **addresses issues of multiple identity** and associated disadvantages and needs;
- **sets out a review process in order to evaluate the extent to which the objectives of the Disability Strategy have been met** by the end of the proposed timeframe and consider the need for a further action plan to meet any objectives not realised.

Background

UN Convention on the Rights of Persons with Disabilities: Northern Ireland Context

6. The Equality Commission and the Northern Ireland Human Rights Commission are jointly designated as the “Independent Mechanism” in Northern Ireland to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
7. This submission has been drafted jointly by the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission in furtherance of their role as the Independent Mechanism.
8. The UK ratified the UNCRPD in 2009. At its core the UNCRPD seeks to promote, protect and ensure full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their dignity. Persons with disabilities should be able to enjoy the same human rights as everyone else and be able to lead their lives as full citizens who can make a valuable contribution to society. It is a unique convention with an explicit social development dimension. It provides a holistic framework which Government can rely upon to develop a human rights approach to the issue of discrimination. A ‘human rights based’ approach acknowledges that if something is necessary for a person to live in dignity, then it is a right that can be claimed and the Government should be held accountable.
9. The UNCRPD therefore provides an invaluable framework which policy developers should rely upon in developing the Disability Strategy for Northern Ireland. This response has been developed jointly by the Commissions with reference to their position as the ‘Independent Mechanism’. Each organisation has also had regard to their separate and distinct remits and either organisation may separately amplify or comment on distinct matters falling within their remits.

10. The development of a Disability Strategy provides a key opportunity for the Executive to implement the obligations placed upon the State by the UNCRPD.

Pre-consultation engagement on the Draft Disability Strategy for Northern Ireland

11. During the pre-public consultation phase we made a number of recommendations to OFMDFM and we are pleased to note that a number of these are reflected in the revised paper issued for public consultation.
12. In particular, we strongly welcomed the work by OFMDFM to produce a disability strategy, the clear reference to the United Nations Convention on the Rights of Persons with Disabilities (the Convention) therein and the early engagement already undertaken with stakeholders.
13. We noted the changed context since the development of the recommendations of the Promoting Social Inclusion (PSI) Working Group on Disability – not least the ratification of the UNCRPD, the devolution of justice and the changed economic environment.
14. We recommended that the Disability Strategy should look beyond the recommendations of the PSI Working Group to becoming a major instrument for fulfilling and reporting on the Executive’s delivery of their obligations within the UNCRPD. We recommended that the UNCRPD should be core to the strategy, and suggested that the PSI recommendations (alongside research and engagement) should be used to identify the priority actions under the relevant Convention articles. We considered that such an approach would also help OFMDFM to demonstrate explicitly, to both international and domestic audiences, how it has implemented the devolved aspects of the Convention.
15. We also noted that some of the evidence presented was GB focussed whilst some pre-dated the current economic recession. We considered that some of these sources could be updated to better reflect the current position in Northern Ireland.

16. We recommended that the strategy should also encompass cross-cutting themes, which reflect all articles of general application within the Convention (notably, Articles 5 to 9 which focus on the topics of equality and non-discrimination; women with disabilities; children with disabilities; awareness raising; and accessibility).
17. We also recommended that OFMDFM give due consideration as to how on-going engagement and involvement of people with disabilities, their advocates and their representative organisations in both the strategy and policy making/delivery process might be facilitated, not only across the life of this and subsequent disability strategies, but also in relation to all other strategies and policies that impact on the lives of people with disabilities and all citizens living in Northern Ireland.
18. On 28 February 2012, the Equality Commission forwarded to OFMDFM officials working on the disability strategy a synopsis of its proposals for reform of Disability Legislation with the indication that it felt that these should be a key feature of the Disability Strategy.
19. Separately, the Equality Commission also advised that research commissioned and published by the Equality Commission on behalf of the Independent Mechanism for Northern Ireland (IMNI) in 2012 entitled *'Disability Programmes and Policies: How Does Northern Ireland Measure Up?'*⁷, concluded that there were a number of gaps in policies and programmes that needed addressed in order to reflect UNCRPD commitments. Four key priorities were identified by the research:
 - the need for awareness-raising campaigns to better inform people with disabilities of their rights, to decrease negative public attitudes and eliminate negative stereotyping of people with disabilities;
 - the provision of accessible information;

⁷ Harper, C., McClenahan, S, Byrne, B. And Russell, H. (2012): Disability programmes and policies: How does Northern Ireland measure up? – Monitoring implementation (public policy and programmes) of the United Nations Convention on the Rights of Persons with Disabilities in Northern Ireland (Equality Commission for Northern Ireland: Belfast). Available at: <http://www.equalityni.org/archive/pdf/UNCRPDFullReportFINAL260112.pdf>

- improving participation in political and public life; and
 - the need for statistics and data collection to better reflect the lives and experiences of people with disabilities living in Northern Ireland.
20. The research concluded that urgent work by the State was required to address the gaps in policies and programmes, not least in these four priority areas.

Additional Evidence Base used in this Response

21. In developing our views of the draft strategy we have taken into account:
- our role as Independent Mechanism for Northern Ireland in relation to the UNCRPD;
 - our previous public policy interventions in this area including those linked to the Equality Commission's statutory and legislative remit to keep the Disability Discrimination Act under review and those linked to the NIHRC's statutory and legislative remit to review the adequacy and effectiveness of law and practice relating to the protection of human rights;
 - a range of evidence published by our respective organisations e.g. *'Disability Programmes and Policies: How Does Northern Ireland Measure Up?' (2012)* and the NIHRC's report *'In Defence of Dignity'*⁸;
 - relevant reports prepared by others e.g. the reports issued by the Bamford Review or the report of the Parliamentary Joint Select Committee on Human Rights, *'Implementation of the Right of Disabled People to Independent Living'* (2012);
 - views of a wide range of stakeholders with disabilities or their representative organisations obtained via ECNI Stakeholder roundtables (Belfast and Londonderry - June 2012); a number of recent events regarding the case for Legislative Reform; evidence gathering workshops in relation to

⁸ Northern Ireland Human Rights Commission (2012): *In Defence of Dignity - The Human Rights of Older People in Nursing Homes*. Available at: <http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf>

Government's compliance with Articles 27 and 28 UNCRPD (the right to work and the right to an adequate standard of living and social protection, respectively).

Views on the Draft Disability Strategy

22. We welcome the Northern Ireland Executive's commitment to develop a Disability Strategy to challenge the wide range of barriers faced by people with disabilities in Northern Ireland and the recognition given to the UNCRPD as the framework under-pinning the Executive's approach to addressing these.
23. However, we are concerned that the strategy does not appear to address the full range of obligations placed upon Government by the UNCRPD.
24. In the sections below, we set out in turn:
 - specific recommendations regarding draft strategic priorities as contained within the draft Disability Strategy;
 - general recommendations to improve the delivery of the both the disability strategy, and the UNCRPD in Northern Ireland.

Specific Recommendations regarding Draft Strategic Priorities

Strategic Priorities 1 and 2: Increase disabled people's opportunity to influence policies, and improve interaction between sectors to achieve social inclusion.

25. We note and endorse the broad intent in Strategic Priority 1 'to increase disabled people's opportunity to influence policies and programmes including the delivery of this Strategy and subsequent action plan, which directly relates to a number of UNCRPD articles, including Article 29 participation in public and political life.
26. We welcome the emphasis placed on these priorities. However, we **recommend** that the wording be revised to more clearly define a firm course of action to ensure the on-going participation of people with disabilities and their representative organisations in oversight arrangements to

ensure the delivery of the Strategy and associated Action Plan.

27. We further **recommend** that provisions regarding the participation of people with disabilities should extend beyond the Strategy and Action Plan to include other Executive policies and programmes.
28. We **recommend** that OFMDFM encourages all Departments to consider what actions they can take to ensure cross-departmental coordination and encourage the participation of people with disabilities in decision making processes, particularly in areas where departments have a clear functional remit in relation to the priorities identified in the Strategy.
29. We **recommend** that Government Departments and other public authorities align specific measures relevant to the Strategy and Action Plan with their Section 75 and Disability Duties Action Plans. The Equality Commission's guidance emphasises the importance of partnership working as a means of enabling delivery on Section 75 and Disability Duties obligations.⁹
30. We note that the Northern Ireland Commissioner for Children and Young People has called for a statutory 'duty to co-operate' to better facilitate the delivery of joined-up working¹⁰. We **recommend** that consideration be given as to how to include disabled children and young people in the development of Government policy initiatives, as well as measures undertaken in this regard by state sponsored bodies. Such consideration should also take into account the need to ensure that disabled children and young people and their advocates are actively involved in shaping and informing the future development and delivery of this Strategy and associated Action Plan.

⁹ Equality Commission for Northern Ireland (2005): *Practical Guidance on Equality Impact Assessment*, page 11; Equality Commission for Northern Ireland (2007): *A Guide for Public Authorities – Promoting positive attitudes towards disabled people and encouraging the participation of disabled people in public life*, paragraph 3.57, pages 35-36.

¹⁰ NICCY (2011): *Barriers to Effective Government Delivery for Children in Northern Ireland*, paragraph 3, page 45.

31. Involvement of people with disabilities in decision-making mechanisms should go beyond disability specific matters to reflect people with disabilities' wider interests as citizens within Northern Ireland.
32. We **recommend** that the Northern Ireland Executive consider how this strategic priority can ensure that people with disabilities are involved in decisions which effect them directly as individuals in need of person-centred public services in key areas such as health, education, training and employment etc.
33. We recognise that delivery of all aspects of this Strategy will require joined-up and inter-sectoral partnership working. The Final Report of the PSI Working Group on Disability recommended that greater partnership working with the private sector in the implementation of its recommendations. Stakeholders have also highlighted to the Equality Commission that there is a need to raise disability awareness amongst the SME sector.
34. We **recommend** the development of capacity building initiatives to enable the effective participation of people with disabilities in decision-making processes, including elected positions.
35. We **recommend** that steps are taken to better ensure people with disabilities with complex needs are engaged in the decision-making process arising from this strategic priority. It was highlighted during the course of the Equality Commission's engagement with the disability sector that only one-fifth of people with learning disabilities exercise the right to vote at political elections.

Supporting Information

36. Article 4.3 of the UNCRPD is particularly relevant in this context ("*State Parties shall closely consult and actively involve persons with disabilities...*"). The obligation is reinforced by Article 29 (b) of the Convention which requires the State Party "*to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with*

others and encourage their participation in public affairs ...

37. In terms of the participation and profile of people with disabilities, the persistent under-representation of people with disabilities in public and political life is a serious challenge for public authorities¹¹. Participation in decision-making and power structures is a critical means by which people experiencing inequalities can effect change¹². For many, however, even participation at community level is hampered due to isolation, lack of appropriate public services, poverty and negative attitudes resulting in discriminatory behaviour towards people with disabilities.
38. In light of the requirements of the UNCRPD, we also wish to draw attention to a key recommendation of the Parliamentary Joint Committee on Human Rights that Government should aim to involve people with disabilities in the development of policy rather than simply consult them. The Committee also added that Government need to ensure that timescales and methods are used which enable involvement of people with disabilities and their representative organisations on a pan-disability basis¹³.
39. Research published by the Equality Commission 2009¹⁴ found that a majority of public authorities did not provide evidence of meeting any of the framework indicators relating to the recruitment of people with disabilities to

¹¹ Only 2% of all public appointments for 2008-2009 in Northern Ireland were offered to people with a declared disability.

¹² The Effectiveness Review of the Disability Duties identified a misunderstanding amongst public authorities regarding the definition of 'public life' with some authorities only identifying 'public life' in terms of public appointments. The Guide to these duties has a wider definition which includes any opportunity or framework which enables people with disabilities to engage in a wide range of decision making processes, for instance membership of a committee, working/focus group, school Board of Governors to being a representative on local and regional bodies. See Equality Commission for Northern Ireland (2009): *Effectiveness of the Disability Duties Review Report*, page 18, paraphrasing paragraphs 1 and 2 and paragraph 3, page 21. Available at:

http://www.equalityni.org/archive/pdf/Review_DisabilityDuties_v1_231209.pdf This link also provides access to the Executive Summary and full text of the Independent Research upon which the Commission's Review Report is based.

¹³ House of Lords/House of Commons Joint Committee on Human Rights (2012): *Implementation of the Right of Disabled People to Independent Living*, Twenty-third Report of Session, 2010-12, paragraph 120, page 38.

¹⁴ McIlwhan, R., Rogers, S. and Bridge, S. (2009): *Evaluating the Disability Discrimination (NI) Order 2006: Summary Report* (ECNI: Belfast), findings f) and g), pages 12-13.

public life positions. Very few authorities had noted any actions relating to encouraging the participation of people with disabilities in public life in their Disability Action Plans beyond formal public appointments. A key priority for action identified by people with disabilities themselves is the need for greater opportunities for participation in public life and access to decision-making processes to be made available by Government.

40. We are aware that the Coalition Government has introduced an Access to Elected Office Fund¹⁵ of £2.6m offers individual grants of between £250 and £10,000 to people with disabilities who want to be selected as candidates for an election, or who are standing for election as councillors, police and crime commissioners or MPs. This fund is for additional disability-related costs that people with disabilities have to pay as part of standing for an election. Whilst people disabilities in Northern Ireland who wish to become MPs are eligible to apply to the fund, the scheme does not extend to those seeking to stand for election to the Northern Ireland Assembly or to Local Councils. There is thus considerable potential for the Executive to take action in this area.
41. We also note the emphasis in the Bamford Review Action Plan 2009-2011 on the need to involve service users, their families and carers in ‘a meaningful way in decisions about mental health’¹⁶.
42. We welcome the commitment by the DHSSPS to introduce a new statutory right (under the proposed new Mental Health Capacity legislation) to an independent advocate¹⁷, as reflecting the Bamford Review’s recognition of the important role of advocacy in a health and social care context.

¹⁵ <http://www.access-to-elected-office-fund.org.uk/>

¹⁶ Department of Health, Social Services and Public Safety NI (2009): *Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Bamford Action Plan 2009-2011*, ‘Partnership with Users and Carers in Planning and Delivering Care’ – Section 7.2 page 31. Available at: http://www.dhsspsni.gov.uk/bamford_action_plan_2009-2011.pdf

¹⁷ DHSSPSNI (January 2012): *Evaluation of the 2009-2011 Bamford Action Plan*, paragraph 5.5.54, page 41.

43. The Executive should be mindful of the need to consider the views and interests of disabled children and young people in the future development of this strategy and other government policy initiatives.

Strategic Priorities 3 and 4: Awareness Raising (disabled people's awareness of rights and challenging negative perceptions)

44. We **strongly agree** with the inclusion of Strategic Priorities 3 and 4 (which directly relates to a number of UNCRPD articles, including Article 9 on accessibility), which highlight both the need to raise awareness of the rights of people with disabilities and opportunities and the need to work in partnership with people with disabilities to challenge negative perceptions of people with disabilities among the general public.
45. We **recommend** that Government consider resourcing initiatives to promote positive attitudes; challenge negative stereotypes and raise awareness reflecting the diversity of disability issues.
46. We **recommend** that the Northern Ireland Executive should consider developing, in partnership with the disability sector, a central database of information and awareness materials which can assist public authorities to promote positive attitudes / practices and challenge negative stereotypes regarding people with disabilities¹⁸.

Supporting Information

47. People with disabilities have identified the need for such initiatives to be a key Government priority¹⁹.
48. Research continues to show that people with disabilities face prejudicial attitudes in various aspects of their lives²⁰. Comparing data taken from the Equality

¹⁸ At a Disability Duties workshop with the Government Departments' Equality Practitioners Group in 2008, Group members advocated the development a good practice information resource which would help Departments to develop measures for their Disability Action Plans

¹⁹ Harper et al (2012), Op Cit. Page 11.

²⁰ Northern Ireland Life and Times Survey, 2009: 16% of those surveyed believed that people with disabilities continued to face a lot of prejudice; a further 57% believed that while

Commission's Equality Surveys in 2005 and 2008 with similar data obtained in its 2011 Equality Survey, there is evidence of increasing negative attitudes towards people with disabilities. Indeed, negative attitudes towards people experiencing mental ill-health have increased in comparison with other equality groups²¹. Voluntary groups in the Mental Health sector have identified the need for a regional campaign to promote positive attitudes towards mental health and to reduce stigma and prejudice.

49. Research has also shown that people with disabilities can be the subject of multiple discrimination. For example, people with disabilities reported being targeted not just because of their mental health, but also for racist or homophobic abuse or because they were transgender²².
50. This strategic priority has a clear cross-cutting theme that relates to many of the strategic priorities set out in the strategy concerning the rights of people with disabilities to access information and goods, facilities and services including those related to employment, education and housing. Furthermore, it is also relevant to generally challenging the attitudinal prejudice that impacts on the lives of people with disabilities.
51. We note that one of the key aims of the Northern Ireland Regional Dementia Strategy is to raise public awareness of dementia, including how members of the public can take measures to reduce the risk of developing dementia

prejudice against people with disabilities had declined they still experienced some degree of prejudice. Available at: http://www.ark.ac.uk/nilt/2009/Attitudes_to_Disability/DISPRJ.html

²¹ The Commission's recent 2011 equality survey considered social attitudes towards people with three types of disability, those with learning and physical disabilities, and people experiencing mental-ill health issues, as with the two previous surveys in 2005 and 2008. Negative attitudes towards people with a disability have increased, most notably towards those experiencing mental ill health. Between 2008 and 2011 these have risen by nine, eight and 12 percentage points towards individuals as a work colleague (from 17%) a neighbour (16%), and marrying a close relative (from 25%). Negative attitudes towards a person with a physical disability as a work colleague rose by seven percentage points to 15%. Equality Commission for Northern Ireland (2012): *Do You Mean Me? Discrimination: Attitudes and Experience in Northern Ireland - Equality Awareness Survey 2011*, (ECNI: Belfast), pages 14 and 32. Available at

[http://www.equalityni.org/archive/pdf/DYMMSurveyMainReport\(webB\).pdf](http://www.equalityni.org/archive/pdf/DYMMSurveyMainReport(webB).pdf)

²² Mind (2007): *Another assault: Mind's campaign for equal access to justice for people with mental health problems*, paragraph 1, page 7. Available at; <http://www.mind.org.uk/assets/0000/4014/Anotherassault.pdf>

as well as enhancing their awareness of the challenges facing people with dementia, their carers and families²³.

Strategic Priorities 5 and 6: Accessibility (Elimination of barriers and increasing accessible / inclusive communications)

52. We welcome the inclusion of Strategic Priorities to ‘eliminate the barriers facing people with disabilities in accessing the physical environment, transport goods and services’ and to ‘Increase the level of accessible / inclusive communications so that people with disabilities can access information as independently as possible and make informed choices.’
53. We **recommend** that the recommendations set out by the Equality Commission in its April 2012 response to the Department of Regional Development’s Fourth Accessible Transport Strategy Draft Action Plan (ATS) 2012-2015 are addressed with regards to the need for:
- legislative reform of the DDA to provide appropriate protection for people with disabilities using transport and other services;
 - on-going engagement with disabled and older people to develop audio and visual aids on public transport;
 - review of the availability of seating for disabled and older passengers and the associated signage policy on various modes of transport, in particular, buses to ensure older and people with disabilities have access to appropriate seating;
 - regular disability equality and general equality awareness training for transport providers, including extension of this provision to taxi operators;
 - a commitment to continue to allocate resources to delivering accessible transport provision beyond the lifetime of the current action plan as well as clear impact measures to ensure the effective delivery of the strategy²⁴.

²³ DHSSPSNI (2011): *Improving Dementia Services in Northern Ireland – A Regional Strategy*, paragraph 1.2, page 6.

²⁴ Equality Commission for Northern Ireland (April 2012): *Response to the Department of Regional Development’s Fourth Accessible Transport Strategy Draft Action Plan (ATS) 2012-2015*

54. We note that limited reference is made to the needs of people with speech, language and communication needs in the Physical and Sensory Disability Strategy for Northern Ireland²⁵ and that funding is not available on a regional basis for appropriate communication devices, leading to uneven and in some cases, unacceptable, waiting times across individual health trust areas for people who require these. Furthermore, we are aware that the Scottish Government has recently introduced guidance²⁶ recommending a regional communications strategy to meet the needs of people who use augmentative and alternative communication (ACC).
55. We **recommend** that the Executive give consideration to adopting a strategic approach to addressing the requirements of people with speech, language and communication needs.
56. We **recommend** that steps are taken to ensure the dissemination of information in a more accessible manner, alongside the need for data collection to better reflect the lives and experiences of people with disabilities living in Northern Ireland. These were identified as priority areas for attention in research published by the Equality Commission on behalf of IMNI in 2012 - 'Disability Programmes and Policies: How Does Northern Ireland Measure Up?'²⁷
57. We **recommend** that a number of significant gaps in disability equality law be addressed to overcome barriers and ensure access to justice (these are discussed later in the section relating to justice).

²⁵ DHSSPSNI (2012): Physical and Sensory Disability Strategy and Action Plan. Available at: http://www.dhsspsni.gov.uk/disability_strategy_and_action_plan_-_2012-2015.pdf

²⁶ The Scottish Government (2012): A Right to Speak – Supporting Individuals who use Augmentative and Alternative Communication. Available at: <http://www.scotland.gov.uk/Publications/2012/06/8416/downloads>

²⁷ Harper, C. , McClenahan, S, Byrne, B. And Russell, H. (2012): Disability programmes and policies: How does Northern Ireland measure up? – Monitoring implementation 9public policy and programmes) of the United Nations Convention on the Rights of Persons with Disabilities in Northern Ireland (Equality Commission for Northern Ireland: Belfast). Available at: <http://www.equalityni.org/archive/pdf/UNCRPDFullReportFINAL260112.pdf>

Supporting Information

58. With respect to accessible/inclusive communications, it should be noted that the Bamford Review²⁸ of Mental Health and Learning Disability Services, concluded that there was clear evidence of under investment in such communications in Northern Ireland, compared with other regions within the UK²⁹.
59. A formal investigation undertaken by the Equality Commission into the accessibility of health information for people with a learning disability in Northern Ireland highlighted that communication systems were often not adequately monitored for effectiveness and that consequently information was not readily accessible or available in formats required by people with disabilities. For example, the investigation, undertaken in June 2006, found that people with learning disabilities face a number of barriers in accessing health and social care information³⁰. The Equality Commission made a number of recommendations on this issue for public authorities within the health sector, including training for healthcare professionals in the delivery of appropriate, accessible information.
60. We note that the Bamford Monitoring Group has highlighted a continuing perceived major deficit in the provision of advice and information for those who use and rely upon mental health and learning disability services³¹. In relation to accessing services addressing suicide, the Bamford Monitoring Group's³² report noted issues during

²⁸ The Bamford Review of Mental Health and Learning Disability Northern Ireland is available at: www.rmhdni.gov.uk

²⁹ Equality Commission for Northern Ireland: *Statement on Key Inequalities in Northern Ireland* (ECNI: 2007), paragraph 3, page 17. Available at: [http://www.equalityni.org/archive/pdf/Keyinequalities\(F\)1107.pdf](http://www.equalityni.org/archive/pdf/Keyinequalities(F)1107.pdf).

³⁰ Equality Commission for Northern Ireland (2006): *Formal Investigation the Accessibility of Health Information in Northern Ireland for People with a Learning Disability* (ECNI: Belfast). See link below [www.equalityni.org/archive/tempdocs/LiteratureRev\(F\)l.doc](http://www.equalityni.org/archive/tempdocs/LiteratureRev(F)l.doc)

³¹ DHSSPSNI (January 2012): *Op Cit.*, paragraph 5.4.24, page 31.

³² The aim of the Bamford Monitoring Group is to capture the views and experiences of those with mental health needs or learning disabilities and their families and carers on the changes resulting from the Bamford Review. The Bamford Monitoring Group is supported by the Patient Client Council. The group has representation from service users, carers and Patient and Client Council members and meets on a monthly basis.

times of crisis, gaining help when needed, assessment and in relation to accessing appropriate services.³³

61. At the recent launch of the ‘Campaign Network’, a user led organisation managed by blind and partially sighted people facilitated by the Royal National Institute for the Blind, at the Northern Ireland Assembly, members expressed frustration to members of the All Party Working Group on Visual Impairment concerning the lack of accessible information to enable them to fully avail of basic services e.g. educational opportunities in their local regional colleges³⁴.

Strategic Priority 7: Independent Living (Level of choice, control and freedom)

62. We welcome the inclusion of this Strategic Priority, and encourage the OFMDFM to consider the importance of independent living for a person with a disability. John Evans, a person with a disability, gave a personal account of the meaning of independent living in evidence to the Joint Committee on Human Rights, he stated:
63. *“It is the freedom for me to be able to do what I want to do, when I want to do it, in a way, because I have people around me who can support me to do that”³⁵*
64. OFMDFM must ensure that people with disabilities have the broadest level of choice, control and freedom available to them as they go about their daily lives.
65. The UNCRPD is particularly relevant in the context of care homes, both residential and nursing care homes. The UNCRPD recognises the right of persons with disabilities to have access to a range of in-home, residential and other community support services (Article

³³ DHSSPS (2012): Op Cit., paragraph, 5.3.7

³⁴ Representatives from the Equality Commission were invited to attend the launch of the ‘Campaign Action Network’ at the Northern Ireland Assembly 18 June, and gave presentations on the UN Convention on the Rights of Person’s with Disabilities and an outline of our key positions on the disability strategy. Many of the issues raised by people with visual impairments had a direct correlation with the general objective within this strategic priority.

³⁵ House of Lords/House of Commons Joint Committee on Human Rights (2012), Implementation of the Right of Disabled People to Independent Living, Twenty–third Report of Session, 2010-12 pg 10

19). Whilst residents of care homes are reliant on support, this should not lead to unnecessary incursions into their level of choice, control and freedom. Furthermore, the mental and physical integrity of persons with disabilities living in care homes should be respected at all times (art.17). The UNCRPD requires a holistic approach to the provision of care homes for persons with disabilities. Persons with disabilities are entitled to the highest attainable standard of health (Article 25). Ensuring the highest attainable standard of health requires more than simply the provision of medical assistance, to enjoy a full life it is important that all rights protected by the UNCRPD are respected.

66. Under Article 30 of the UNCRPD those responsible for the provision of residential care must ensure that disabled persons are able to effectively participate in cultural life, recreation and leisure. They also must ensure access to the physical environment (Article 9).
67. We **recommend** that the Strategy recognises the importance of ensuring respect for the dignity of persons with a disability living in a care home and that the associated action plan makes appropriate provisions to promote and protect the human rights of residents.
68. We are pleased to note that the forthcoming Mental Capacity (Health, Finance and Welfare) Bill will include a statutory definition of restraint and we expect that this definition will draw on international human rights standards. The introduction of a statutory definition alone will not be sufficient to ensure the risk of abuse is minimised. We consider that the strategy should commit to the development of formal guidance on the use of restraint which takes into account Article 15 of the UNCRPD.
69. We **recommend** that Government Departments work together to undertake a joined up and strategic approach to ensure effective delivery of independent living programmes.

Supporting Information

70. We highlight that the Joint Parliamentary Committee on Human Rights has raised the issue of a legislative right to independent living, recommending that all relevant parties, including the Executive, consider the introduction of free-standing legislation to give more concrete effect in UK law to the right to independent living enshrined in the UNCRPD³⁶.
71. The removal of the Independent Living Fund; cuts in public sector spending and the potential adverse impacts of welfare and health reform are amongst the key issues which need to be addressed under this strategic priority.
72. We note the observation of the Bamford Monitoring Group that whilst targets in relation to Direct Payments have been achieved these were set against a very low baseline. The Group also highlighted the considerable variation in availability of Direct Payments across Trust areas and the need for more progress towards self-directed support and personal budgets³⁷.
73. In the report 'In Defence of Dignity' NIHRC recommended that the Nursing Homes Regulations (NI) 2005 be amended to require that nursing homes are conducted so as to promote and protect resident's human rights. The NIHRC further recommended that human rights standards be integrated throughout the Nursing Homes Minimum Standards, this should include the provision of human rights training for staff, along with training on assessing capacity to ensure due regard for independent living. Care home residents should also be able to access independent advocacy services. The Independent Mechanism understands that the Department of Health Social Services and Public Safety has these issues under active consideration. The Report also considered in detail the use of restraint which is at times required in the care home context to ensure the safety of residents. The Report noted that the absence of a statutory definition of restraint led to uncertainty and created the potential for abuse.

³⁶ *ibid*, page 3.

³⁷ DHSSPSNI (2012): Op Cit. paragraph 5.4.19, page 31.

74. Research³⁸ published by the Equality Commission noted that a review of the ‘Supporting People’ programmes across the UK in 2010 had revealed a lack of robust research evidence on outcomes for service users as well as the effectiveness of programme administration/funding in enabling service providers to meet the housing-related needs of vulnerable adults. Further research was thus recommended on the impact of the ‘Supporting People’ programmes.

Strategic Priorities 8 and 9: Support for families with disabled children and parents with disabilities

75. We welcome the inclusion of these priorities. As highlighted earlier, families with children with disabilities and parents with disabilities need effective support from Government and this is emphasised throughout the UNCRPD.
76. We note that the draft Strategy focuses on the role of carers in terms of parental responsibilities. However, it is important to remember that the role of the carer is often undertaken by other family members, friends and neighbours. Furthermore, such a role is generally unpaid and not fully recognised as a legitimate vocation or appropriately resourced by Government.
77. We do have some concern that the needs of families who have a disabled parent or parents do not receive specific attention within the strategy. Given the important role played by young carers we **recommend** that specific reference to the needs of children who have caring responsibilities for parents and other family members with disabilities should be included within the Strategy.³⁹
78. We **recommend** that the disability Strategy includes a strategic priority to address the challenges facing the range of carers in Northern Ireland, taking into account measures already adopted to support carers in Great

³⁸ Harper, C. et al (2012): Op cit, page 160.

³⁹ “Contribution of young carers vital – McGimpsey” (17 May 2010)

<http://www.northernireland.gov.uk/news/news-dhssps/news-dhssps-may-2010/news-dhssps-17052010-contribution-of-young.htm>

Britain e.g. the statutory obligation to provide safe and affordable childcare, including for disabled children.

79. We are conscious that the UK Government's National Strategy for Carers included a number of recommendations that should be considered in the context of Northern Ireland, including:
- the introduction of annual health checks for carers;
 - supporting carers to ensure they are able to have a family and community life outside of caring;
 - the development of awareness raising training for GPs on the health issues facing carers; and
 - investment in respite cover to enable carers to take periodic breaks⁴⁰.
80. We note the commitment to review the Carers Strategy in Northern Ireland and would recommend the inclusion of similar programmes and financial support for all carers in Northern Ireland.

Supporting Information

81. We note the recent findings/conclusions and recommendations from a recent report⁴¹ based on the survey of nearly 3,400 carers, which show that:
- 87% said caring responsibilities had a negative impact on their mental health;
 - 83% said caring responsibilities had a negative impact on their physical health;
 - 64% felt they did not receive enough practical support; and
 - half those surveyed said that lack of financial support had an adverse impact.
82. The report made a number of recommendations including: the need for sustainable funding for social care; for respite provision for carers; and the need for timely support from local GPs.
83. We are aware that, in order to identify the support needs of carers by the local health trusts it is critical that they

⁴⁰ Department of Health (2010): *Carers at the heart of 21st Century families and communities* (Department of Health: London).

⁴¹ Carers Northern Ireland (June 2012): 'In sickness and in Health Report- Summary of key findings', page 1. Available at: <http://www.carersuk.org/news-northern-ireland/item/2610-cw2012-research>

use and complete the carer's assessment tool. We note that the Bamford Monitoring Group points out that only 58% of those surveyed had heard of a carer's assessment and that more work is required to deliver outcomes⁴².

84. We note the reduced targets in relation to respite provision in supporting informal carers to continue in their role. The Bamford Action Plan set targets for increased respite provision of 200 learning disability packages and 2000 dementia packages per year. However, reductions in funding in 2010/11 resulted in these targets being reduced to 125 and 1200 respectively⁴³.
85. Many carers also find they are not eligible for Carers Allowance due to strict rules over who can claim it, and of those that receive it, the benefit is the lowest one of its kind at £58.45 a week (2012-13 rate). Furthermore, many carers have to rely on savings, pensions and critical illness cover in order to survive⁴⁴.

Strategic Priority 10: Transition to adulthood

86. Transition planning is of fundamental importance to ensuring young people with disabilities fully progress into adulthood. Ensuring appropriate support for young people making the transition to adulthood is essential to ensuring people with disabilities are able to live an independent life, as protected by Article 19 and that they are able to exercise the right to work, as protected by Article 27.
87. Young persons, whether suffering from a learning disability or physical disability, have complex support requirements and it is important that support plans are tailored to each individual's needs. Suitable work placements should be identified with reference to a person's profile, life experience and realistic expectations. Financial support/benefits should not be withdrawn until an appropriate employment opportunity is identified.

⁴² DHSSPS Integrated Projects Unit (January 2012): *Evaluation of the Bamford Action Plan, as at December 2011*, paragraph 5.4.5, page 29. Available at:

<http://www.dhsspsni.gov.uk/bamford-evaluation-action-plan2009-2011.pdf>

⁴³ Ibid, paragraph 5.48.

⁴⁴ Carers Northern Ireland (2012) Op.Cit., page 9.

88. We **recommend** the development and resourcing of transition services across the whole of Northern Ireland.
89. We further **recommend** that a joined-up approach by public authorities to transition services should be considered as a key priority within the Disability Strategy.

Supporting Information

90. The Bamford Monitoring Group has highlighted a perceived lack of new courses and a limited variety of existing courses and emphasised the need for more input from people with a learning disability in order to identify perceived barriers to change⁴⁵.
91. We note the report of the Transitions Inter-Departmental Working Group (2006) identified gaps in transition planning and urged that these were addressed in the forthcoming action plan to implement the Disability Strategy⁴⁶. Since the removal of the Children's Fund, we understand that organisations delivering transition services have faced difficulties in sustaining this provision.

Strategic Priorities 11 and 12: Standard of Living (reduce poverty) appropriate accommodation / support

92. We strongly welcome the commitment to reduce poverty among people with disabilities and their families and protect their right to an adequate standard of living, as protected by Article 28.
93. We note that the strategy states that *“many disabled people have expressed concern that DLA does not cover all the extra costs of living with a disability”* and *“There is growing concern however expressed by disabled people that the new PIP could impact on their ability to cope with their essential needs when living with a disability, including accessing and keeping employment”*.

⁴⁵ DHSSPSNI (January 2012): Op Cit., paragraph 5.5.26, page 36.

⁴⁶ Report of the Transitions Inter-Departmental Working Group (2006). Amongst the gaps identified were inappropriate and inflexible day-care provision for young adults, limited vocational and life skills training opportunities, lack of flexible employment opportunities e.g. open and supported employment, lack of advice and information to parents and young people with disabilities and gaps in transition training for independent living.

94. We **recommend** that, given the current economic climate and the potential adverse impact of welfare reform on people with disabilities, the Strategy and action plan should prioritise mitigating measures to ensure that people with disabilities are able to live independently and have an adequate standard of living and social protection⁴⁷.
95. We are aware from our engagement events with the disability sector and our literature review of existing research that children and young people with disabilities and their families are at greater risk of poverty prior to cuts in welfare expenditure.
96. We **recommend** that the Northern Ireland Executive identify specific actions with outcome focused targets to ensure the poverty experienced by children and young people with disabilities and their families is reduced, and that ‘their best interests’ are protected against the impacts of cuts in welfare expenditure.
97. We **recommend** ongoing investment and support for people with disabilities to live in affordable accessible accommodation.
98. We note the work being undertaken by the Northern Ireland Housing Executive (NIHE), in partnership with Disability Action, to develop a register for accessible accommodation. **We recommend** that accessible housing provision is also taken forward by Housing

⁴⁷ Equality Commission for Northern Ireland (2011): *Commission response to the Department of Social Development’s consultation on the Welfare Reform Bill (Northern Ireland) 2011 Equality Impact Assessment*. Available at:

<http://www.equalityni.org/archive/pdf/ECNIRresponseDSDWelfareReformBillEQIA141211.pdf>;

Equality Commission for Northern Ireland (2012): *Commission response to DSD consultation on Personal Independence Payment (PIP)*. Available at:

http://www.equalityni.org/archive/word/ECNIRresponse_DSDPIPAssessmentThresholds_v0kFinal_020512.docx

Equality Commission for Northern Ireland (2012): *Commission response to DSD Consultation on DLA Reform and Personal Independence Payment (PIP) – Completing the Detailed Design*. Available at:

<http://www.equalityni.org/archive/word/ECNIRresponseDLAReformPIPCompletingDetailedDesignDraftRevised28June2012.docx>

Associations in Northern Ireland and that an accessible housing register continues to be maintained.

99. In certain circumstances, persons subject to immigration control are excluded from accessing welfare and housing benefits. This includes Disability Living Allowance, other disability related benefits such as Severe Disablement Allowance and Carer's Allowance, as well as homelessness assistance. Restrictions on access to benefits and homelessness provision have also been introduced by the Worker Authorisation Scheme for certain categories of person from the most recent EU accession states (the A2 states Bulgaria and Romania). This means potentially there is a group of disabled persons living in Northern Ireland for whom benefits necessary to attain even the most basic standard of living are not available.
100. It would be a significant gap if the Strategy failed to take account of the full range of circumstances of disabled people - including those with no or limited access to public funds and/or subject to immigration control.
101. While Immigration is 'excepted' for Westminster and therefore not within the legislative remit of the NI Executive, there are other immediate actions for the Executive, which could be addressed in the Disability Strategy and / or accompanying action plan, including:
- ensuring that inter-agency protocols are in place so that where a person with disability is ineligible for public funds, they are referred to the Health and Social Care Trust for an assessment as to whether social care support can be provided;
 - ensuring development and implementation of DHSSPS guidance, drawing on international human rights standards, to ensure that Trusts are aware of the circumstances in which they can and/or should assist persons who are excluded from accessing public funds;
 - ensuring the establishment and continuing operation of an emergency fund that can be accessed by voluntary organisations which accommodate or

otherwise support individuals with no or limited recourse to public funds;

- engagement at Westminster to secure legislative change so that everyone within the territory of the UK has access to an adequate standard of living and no-one is allowed to fall into destitution.

102. OFMDFM should also give consideration to developing support for people with disabilities who are subject to immigration control.

Supporting Information

103. Recent research⁴⁸ has found many families with disabled children are going without basic essentials and the government's austerity measures and proposed welfare reform proposals have an impact. The research found that although 72% of families with disabled children are working families, only 14% of these families had access to paid childcare. Nearly half of those families interviewed had gone without heat, while 66% were behind (or in arrears) with respect to paying their utility bills. A quarter of the families interviewed did not obtain special aids and equipment because of lack of money. The research highlighted four key recommendations necessary to alleviate poverty among families with disabled children which should be considered by the Executive:

- automatic winter payments to address fuel poverty;
- resourcing the provision of specialist debt advice services;
- prioritisation of their issues in a child poverty strategy;
- disregarding DLA payments when calculating entitlement to discretionary housing payments.

104. In the Equality Commission's response to the Department of Social Development's recent consultation on the equality impact assessment of the Welfare Reform Bill, we expressed concern about several aspects of the proposed reform, including:

⁴⁸ Contact a Family (May 2012): *Counting the Costs 2012, - The financial reality for families with disabled children in Northern Ireland - Summary Report* (Contact a Family: Belfast). Available at: <http://www.cafamily.org.uk/pdfs/Counting%20the%20Costs%20NI%20insert.pdf>

- The potential impact of the Housing Benefit Cap on people with disabilities;
 - The higher qualification criteria for the Disability Living Allowance (DLA) equivalent Personal Independence Payment (PIP);
 - The Work Capability Assessment and the qualification criteria for the new Employment Support Allowance which replaced Incapacity Benefit⁴⁹.
105. Research undertaken by the Office of Disability Issues in May 2007 concluded that investment in accessible housing was a means of reducing health and social care expenditure and removing barriers to social exclusion⁵⁰. The Equality Commission has previously recommended the need to adopt lifetime home/wheelchair accessible standard housing across the public and private housing sector to provide increased choice and better access to improved quality of life.
106. The Northern Ireland Housing Executive (NIHE) has recently highlighted⁵¹ a considerable annual shortfall in meeting assessed need for social housing for disabled people alongside an overall demographic growth in demand from both the general older population, people with disabilities and from wheelchair users. The Executive has drawn attention to:
- the need to reduce the widening time line between assessed need for wheelchair housing and provision which has led to an increased waiting list;
 - the need for an increased supply of the right mix of new build lifetime homes and wheelchair standard properties to address the needs of disabled people;
 - the need for funding for housing adaptations to be maintained / increased to reflect demographic trends

⁴⁹ Equality Commission for Northern Ireland (2011): Op Cit.; Equality Commission for Northern Ireland (2012): Op Cit.

⁵⁰ Heywood, F. and Turner, L., (2007): *Better Outcomes, Lower Costs: Implications for Health and Social Care Budgets of Investment in Housing Adaptation, Improvements and Equipment – A Review of Evidence* (Bristol University for ODI), paragraphs 1 and 2, page 94. Available at <http://www.officefordisability.gov.uk/docs/res/il/better-outcomes-report.pdf>

⁵¹ Northern Ireland Housing Executive (February 2012): Next Generation of Equality Schemes - Appendix 2, Audit of Inequalities. Available at: http://www.nihe.gov.uk/appendix_2_-_next_generation_of_equality_schemes_audit_of_inequalities.pdf

over time as any reduction will exacerbate waiting lists for existing accessible housing.

107. The NIHE has also identified applications for accessible social housing by people in privately owned property because wheelchair standard housing is not built in the private sector, and adaptations are not an option due to technical constraints or financial shortfalls. Further, it is proposed that building regulations in the private sector should be raised to lifetime homes standards to help increase the supply of accessible housing in that sector and help reduce applications for accessible social housing from the private sector.
108. In 2009, the NIHRC launched '*No Home from Home*', an investigation examining the human rights protection of homeless people with limited access to public funds. It found examples of people with disabilities, single persons and parents with families, excluded from accessing services beyond immediate hospital care. For example, one person who participated in an interview for the investigation explained that after receiving inpatient hospital care for long term mental illness she was discharged unable to access homelessness assistance or financial support. The investigation found that even where immigration rules prevent access to homelessness assistance and welfare benefits, there may be circumstances in which the Health and Social Care Trust can assist. This was not always understood by Trust staff in part because there is a lack of departmental guidance for Trusts in these cases.

Strategic Priorities 13 and 14: Employment and Employability

109. We strongly agree with the inclusion of a Strategic Priority to increase the opportunities for people with disabilities to enter and remain in employment, given higher levels of unemployment among people with disabilities⁵². The NI Executive are obliged by Article 27 to protect the right to work of people with disabilities. Closely related to this is

⁵² Equality Commission for Northern Ireland (2007): *Statement on Key Inequalities in Northern Ireland* (ECNI: Belfast), page 22 final paragraph.

the right to an education, protected by Article 24 which recognises the right to equal access to vocational training.

110. We **recommend** that the Strategy takes into account the need to ensure:
- that people with disabilities already in employment can be retained in employment;
 - that people with complex disabilities are given the opportunity to find employment, where possible;
 - a smooth transition from unemployment to employment;
 - full consideration to Article 27 of the UNCRPD, including the requirement to promote opportunities for self-employment and entrepreneurship. This is particularly relevant given the emphasis on growing business within the jurisdiction.
111. We **recommend** that any action measures to promote employment under this Strategic Priority be sufficiently flexible to ensure that the move from benefit to employment does not impose an unintended financial penalty on people with disabilities.
112. The Department of Education (DENI) is currently taking forward a wide ranging review of special educational needs and inclusion. The Equality Commission submitted (April 2012) a response to the Department's Summary Report of Responses to the *Consultation on Every School a Good School - The Way Forward for Special Educational Needs and Inclusion and the associated Equality Impact Assessment*⁵³ and sent a related briefing to the Education Committee in April and May 2012.
113. In June 2012, the NIHRC supplied the Minister for Education with advice on a human rights compliant redress system for children with SEN/disabilities. Therein, the NIHRC highlighted Article 7(3) of the UNCRPD which places a responsibility on the NI Executive to ensure that during the redress process any child capable of forming his or her own views is accorded

⁵³ Equality Commission response to Department's Summary report of responses to SEN review, April 2012,

the opportunity to express these views and further that these views will be given due weight. In July 2012, the Equality Commission responded to the Ministerial briefing on the review and made a number of recommendations, including provision for training persons with key roles in supporting children with SEN/disabilities and an annual review of Co-ordinated Support Plans and Personal Learning Plans.⁵⁴ We **recommend** that the strategy ensures an approach to SEN in line with the UNCRPD and the above advices.

114. The relevance of the UNCRPD and other international human rights treaties has been conveyed to the Department and it is important that the human rights implications of the review are fully considered. We **recommend** that those responsible for developing the Disability Strategy liaise with the Department of Education to ensure full consideration is given to the rights contained within the UNCRPD and implementation of the recommendations made in the above submissions.

Supporting Information

115. Under Article 24 of the UNCRPD, the NI Executive is obliged to ensure to children with disabilities access to an inclusive education system. Although the UK Government has entered a reservation to Article 24 stating that it, 'reserves the right for disabled children to be educated outside their local community where more appropriate education is available elsewhere', it has nonetheless committed itself in a declaration that accompanies Article 24 'to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children'.
116. Research carried out by the Equality Commission into employment inequalities in an economic downturn found that there had been significant falls in employment rates during the recession for people with disabilities not registered as DDA, a decline in opportunities for work

⁵⁴ Equality Commission for Northern Ireland (July 2012): *Response to Ministerial; briefing on 16 May and 13 June 2012*. Available at: <http://www.equalityni.org/archive/pdf/ECNISENAdditionalViewsOnReviewProposals060712.pdf>

placements for people with disabilities and an increasing feeling of insecurity for those in work⁵⁵.

117. We note the discussion on the supported employment model in the Final Report of the PSI Working Group on Disability, which highlighted the need for appropriate resources for the model so as to cover the full range of disabilities including individuals with complex needs. At present, funding for the Supported Employment model is mainly provided via the European Social Fund⁵⁶ and the Executive is asked to note that at present this type of funding is only available until 2014.
118. Stakeholders attending the Equality Commission's Article 27 workshops and stakeholder round-tables on the draft Disability Strategy pointed out that mainstream government programmes to support people with disabilities into employment did not include accurate statistics and targets for people with disabilities with complex needs. The majority of people with disabilities within this category cannot avail of the more mainstream government employment programmes⁵⁷.
119. The PSI Working Group on Disability noted the disincentives created by the benefits systems for people with disabilities seeking work⁵⁸.

⁵⁵ McQuaid, R., Hollywood, E. and Canduela, J. (2010): *Employment Inequalities in an Economic Downturn*, (ECNI: Belfast), page 63.

⁵⁶ Promoting Social Inclusion Working Group on Disability (2009): *Report of the Promoting Social Inclusion Working Group on Disability*, (OFMDFM: Belfast), paragraphs 8.16-8.17, pages 108-109.

⁵⁷ The Government's Access to Work scheme is targeted at people with disabilities who may need additional support, reasonable adjustments to stay in employment such as aids/equipment, job coach, a support worker etc. The scheme is acknowledged as being 'very creative' in considering individual support requirements. However, it does not include measures such as provision of job coaches or vocational profiling to assist people with disabilities to find employment. This mainstream programme has been adapted to support people with learning disabilities or who have complex support requirements to find employment but only provides such support when employment has been found. Open Society Institute (2005): *Rights of People with Intellectual Disabilities - Access to Education and Employment*, (EU Monitoring Advocacy Programme Mental Health Initiative, UK Monitoring Report), paragraphs 2-3, page 158.

⁵⁸ McQuaid, R et al (2010), Op Cit., paragraph 2.42, page 27.

Strategic Priority 15: Justice and Community Safety (Ensure equal treatment and access to justice)

120. We consider that in addition to expanding to include actions addressing the urgent need for legislative reform, this strategic priority should also take into account a broad range of issues relating to the criminal justice system and its impact on people with disabilities, including hate crime and the barriers experienced by people with disabilities trying to access justice as well as those in detention. The UNCRPD at Article 13 places a significant responsibility on Government to ensure that persons with disabilities are able to access justice.
121. If positive measures are not taken to ensure that persons with disabilities can access justice they will be at an enhanced risk of victimisation as they will be unable to call on the legal system to offer them protection. It is important that appropriate support is provided to persons with disabilities and these should be person specific. Given the importance placed on access to justice within the UNCRPD, it is important that it receive specific attention within the Strategy.

Legislative Reform

122. While we welcome the inclusion of a strategic priority on Justice and Community Safety, we do not consider that the strategy addresses the range of weaknesses in current protections, duties or provisions for people with disabilities.
123. We **recommend** changes that will impact across the scope of the disability legislation to give stronger protection against discrimination for people with disabilities when accessing services, transport and the built environment, schools, rented accommodation and in employment. The Equality Commission's proposals⁵⁹ for

⁵⁹ Equality Commission for Northern Ireland (2012): *Strengthening Protection for Disabled People, Proposals for Reform*. Available at: http://www.equalityni.org/archive/pdf/Strengthening_protection_for_disabled_people0312.pdf

reform of the disability legislation, published earlier this year⁶⁰, include:

- simplifying and bringing consistency to the legislation;
- improving protection against different types of discrimination, taking account of developments in case law;
- updating the definition of disability to reflect the social model and removing the list of capacities;
- providing protection for carers of people with disabilities and those perceived as being disabled;
- providing protection against harassment in accessing goods, facilities and services;
- prohibiting pre-employment disability questions, except in specific circumstances;
- extending to schools the duty on further and higher education to provide auxiliary aids and services;
- providing additional reasonable protections for disabled tenants.

Supporting Information

124. The Equality Commission has also recently published an expert legal briefing⁶¹ on the impact of the House of Lords decision in the Malcolm Case. The briefing concludes that the decision has had a significant negative effect on disabled people and disability law in NI.
125. Adoption of these recommendations would ensure that Northern Ireland equality law does not lag behind improvements which have already taken place in Great Britain or are due to be implemented following the passing into law of the Equality Act 2010 which has significantly harmonised and strengthened disability equality law.

⁶⁰ In response to an on-line survey on disability law reform carried out by the Equality Commission in May 2012, 78% of respondents agreed that the disability laws are in need of reform, whilst the vast majority of respondents were in support of the Commission's specific proposals for legislative reform.

⁶¹ Casserley, C. (2012), The impact of Malcolm v London Borough of Lewisham and Northern Ireland equality legislation. Equality Commission.
<http://www.equalityni.org/archive/word/Malcolmpaperfinal.docx>
<http://www.equalityni.org/archive/word/Malcolmexecutivesummaryfinal.docx>

126. By simplifying the law and ensuring greater consistency between disability equality law in Great Britain and Northern Ireland, the proposed changes will make it easier for employers, public bodies and service providers (including those who operate both in Great Britain and Northern Ireland).
127. We consider that the proposed changes are in keeping with the State's international obligations under the UNCRPD, in particular Article 5, and will also help ensure that Northern Ireland's disability equality legislation complies with the anticipated requirements of the draft European Commission Directive on the provision of goods and services.⁶²

Reform of Mental Health & Capacity Law

128. The preparation of the Disability Strategy comes at a time when wide ranging reform of the law relating to mental health and capacity is being prepared. The revision of mental health and capacity legislation should assist in safeguarding the human rights of persons with mental or intellectual impairments. It is important that the forthcoming draft Bill takes full account of the UNCRPD and that this is placed in context of the overarching Disability Strategy which should similarly have the UNCRPD at its core.
129. It is hoped that the forthcoming Mental Capacity (Health, Finance and Welfare) Bill will update the law in line with the UNCRPD. In the 'In Defence of Dignity' report, the NIHRC recommended as a matter of urgency that the NI Executive bring forward legislation on capacity which provides for a "presumption of capacity" and a 'decision specific approach'. It is understood that the Bill will move towards a presumption of capacity. This is an important development in ensuring compliance with the UNCRPD. OFMdFM will be aware of the current debate regarding the application of the Bill to under 16s, this is currently being considered by the NIHRC.

⁶² Draft Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, July 2008, COM (2008) 0426; available at <http://www.lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>

130. Further to the NIHRC report ‘In Defence of Dignity’, we **recommend** that the Strategy contains specific consideration of the rights of persons with mental or intellectual impairments.
131. We would welcome further development, within the Strategy, of the concept of independent living and the range of ways in which a disabled persons’ level of choice, control and freedom can be maximised.
132. We would welcome detailed clarification on how the proposed reforms to mental capacity and health law will be integrated within the Strategy and action plan.

Supporting Information

133. OFMDFM should have particular regard to Articles 19 and 26 relating to independent living when considering the barriers to persons with mental or intellectual impairments enjoying rights on an equal basis with others.
134. Under Article 19 persons with disabilities should have “choices equal to others”. Furthermore, Article 26 requires states to take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life.
135. It is important to note that Article 26 of the UNCRPD obligates the UK to strengthen and extend comprehensive rehabilitation services and programmes. This is an important obligation that merits discussion within the Strategy. However, reference to rehabilitation is unfortunately absent from the draft Strategy.

Hate Crime

136. Hate crime against people with disabilities is a significant and persistent problem that has largely been unacknowledged⁶³. Statistics show that particular categories of people with disabilities, such as people with

⁶³ Institute for Conflict Resolution (2009): *Hate Crimes Against Disabled People: A Baseline Study of Experiences in Northern Ireland* (ICR: Belfast), paragraph 2, page 14. Available at: http://www.conflictresearch.org.uk/cms/images/stories/daniel/pdfs/hate_crime_against_people_with_disabilities_pdf_760kb_%5B1%5D.pdf

mental health issues, are more likely to be the victims of hate crime or abuse⁶⁴.

137. We **recommend** that the Department of Justice consider how this strategic priority could involve the review and strengthening of measures to reduce the level of hate crime people with disabilities face e.g. promoting awareness of hate crime, how it should be reported and recorded, monitoring subsequent satisfaction levels of victims with disabilities with regards to the effectiveness of the measures in place
138. A strategy on hate crime should include holistic measures including effective legal and other remedies to reduce hate crime and to support victims, including people with disabilities⁶⁵.
139. We are aware of the Community Safety Training Programmes being undertaken by the disability sector with a clear focus on prevention of and response to incidents of hate crime against people with disabilities. We believe that this strategic priority provides an opportunity for Government to support these types of Programmes.

Supporting Information

140. We note that a key recommendation by the Criminal Justice Inspectorate for Northern Ireland that a Hate Crime Strategy be developed by criminal justice agencies has not yet been realised.
141. The CJINI follow up report also noted that of five recommendations aimed at improving the management of information on the recording and prosecution of hate

⁶⁴ 62% of people with mental health issues surveyed were verbally assaulted, 41%, bullied, 22% physically abused. A survey of blind and partially sighted people found that 60% were the victims of verbal abuse compared with 50% of sighted people and twice as likely to be physically abused compared with sighted people, with 70% of this group having experienced some form of abuse such as that highlighted above more than once. Available at: http://www.conflictresearch.org.uk/cms/images/stories/daniel/pdfs/hate_crime_against_people_with_disabilities_pdf_760kb_%5B1%5D.pdf

⁶⁵ The review may wish to consider the *Government Response to Hidden in Plain Sight, the Equality and Human Rights Commission Report on Disability Related Harassment* (July 2012), setting out the Coalition Government proposed actions to tackle the problem in GB.

crime, only one has been fully implemented and progress in this area has been slow⁶⁶.

142. We are concerned that the policing plan for 2008-2011 set out specific performance targets in relation to increasing hate crime clearance rates against sectarianism, racism and homophobic crime, but omitted consideration of disability related hate crime. Indeed beyond the low statistic of 4% hate crimes against people with disabilities, we note the absence of progress made against any of the targets/recommendations set out in the report⁶⁷.

Access to Justice

143. People with disabilities are more likely to be the victim of a crime than others.⁶⁸ Furthermore people with disabilities may be concerned that due to their disabilities they may experience difficulty in ensuring that those who have victimised them are brought to justice. It is therefore important that all sections of the criminal justice system are aware of the issues and needs of people with disabilities. The prevalence of hate crime underscores the importance of ensuring that people with disabilities have confidence in the justice system and the Executive should continue to work towards this to ensure full compliance with Article 13 of the UNCRPD⁶⁹.
144. The Strategy should give specific attention to the particular context and history of Northern Ireland. The study Trauma Health and Conflict (2008) concluded that 'the Troubles' had a distinctive and significant impact on the mental and physical health of the population and that 12,000 adults had long standing Post Traumatic Stress Disorder⁷⁰. This is clearly a significant finding which

⁶⁶ Criminal Justice Inspectorate for Northern Ireland (2010): *Follow up Inspection of the Management of Hate Crime by the Criminal Justice System in Northern Ireland* (CJINI: Belfast), page iv.

⁶⁷ Ibid, page 3.

⁶⁸ See Office for Disability Issues Website 'Disability Facts and Figures'

<http://odi.dwp.gov.uk/disability-statistics-and-research/disability-facts-and-figures.php>

⁶⁹ Criminal Justice Inspectorate Northern Ireland (2010): Op. Cit., page 9.

⁷⁰ The Northern Ireland Centre for Trauma and Transformation and the Psychology Research Institute, University of Ulster (2008): *Trauma, Health and Conflict in Northern Ireland* (University of Ulster). Available at:

<http://www.nictt.org/attachments/article/22/NICTT%20THC%20in%20NI.pdf>

should be given consideration in the context of this strategy.

145. The Equality Commission has highlighted that if the policies, practices and procedures of a court or tribunal, make it impossible or unreasonably difficult for a disabled person to give evidence, then the court or tribunal is under an obligation to take reasonable steps to ensure that practice or procedure no longer has that effect⁷¹.
146. We **recommend** that people with a mental or physical disability, including people with personality disorders or learning disabilities, who because of that disability find it impossible or unreasonably difficult to give evidence, should be eligible for protections to enable them to give their best evidence in civil proceedings.
147. It is essential that courts and tribunals, when considering the nature and effect of a person's disability when deciding what special measures should be introduced, should take into account the needs of people with multiple disabilities; for example, a person may have both physical and mental disabilities that impact on their ability to give evidence. Account should also be taken of the additional needs of disabled children, who due to a combination of the effects of their age and disability, require special measures when giving evidence in civil proceedings.
148. In addition, we **recommend** that steps are taken by tribunals to reduce levels of fear and stress associated with either giving evidence or seeking redress at a tribunal. This could be done, for example, by the provision of additional information on what users can expect in terms of the tribunal procedure and to explain processes and terminology.

Supporting Information

149. The Department of Justice has committed to developing a five year victims and witnesses strategy. In addition the Committee for Justice of the Northern Ireland Assembly recently reported on its review of Criminal Justice

⁷¹ Equality Commission for Northern Ireland (2010): *Response to Northern Ireland Law Commission consultation paper on vulnerable witnesses in civil proceedings*, page 4.

Services available to Victims and Witnesses of Crime in Northern Ireland. It is important that the experiences and views of victims and witnesses with disabilities are given specific attention.

150. The requirements of the DDA 1995 apply to all persons who meet the definition of disability set out in the legislation i.e. a person who has a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities. Courts and tribunals must provide auxiliary aids or services if this would enable (or make it easier for) people with disabilities to make use of the services or facilities⁷².
151. In deciding what is 'reasonable', a number of relevant factors need to be considered; including the type of service that is being provided, the nature of the service provider and its size and resources and the effects of the disability on the individual disabled person⁷³.
152. Stakeholders who participated in the Equality Commission's roundtables on the draft Disability Strategy identified the need to consider the needs of children and young people with disabilities detained by criminal justice system to ensure the issues they faced as a result of their disabilities would be effectively addressed. One in four young offenders is considered to have communication difficulties and/or special educational needs (SEN)⁷⁴.
153. In the Equality Commission's submissions⁷⁵ to the DENI on the review into Special Educational Needs and Inclusion, one of its key recommendations is the need for the DENI and the Department of Justice to liaise to ensure that the practices and procedures of SENDIST do not restrict access to justice for disabled children and young people, including those with SEN. In this regard,

⁷² Ibid, page 4.

⁷³ Ibid, page 4.

⁷⁴ Department for Health, Social Services and Public Safety (NI), (2008): *The Northern Ireland Task Force Report on Speech and Language Therapy for Children and Young People*.

http://www.dhsspsni.gov.uk/regional_speech_and_language_therapy_task_force_report.pdf

⁷⁵ Equality Commission for Northern Ireland (2012): *Response to Department of Education consultation on the Review of Special Educational Needs and Inclusion*.

<http://www.equalityni.org/archive/pdf/ECNISENAdditionalViewsOnReviewProposals060712.pdf>

the NIHRC has advised that access to fair redress procedures should include commitment to the principle that due weight should be given to the views of the child as articulated in Article 7(3) of the CRPD. As such, if a child is capable of forming his or her own views, then he or she should be accorded the right, notwithstanding the permission of the SENDIST, to speak at any relevant hearing.

Recommendation for Additional Strategic Priority: Health and Social Care

154. We are mindful that the omission of health and social care in the form of strategic priorities was likely taken in the context of the PSI Working Group Report which went beyond the medical model interpretation of disability to reflect the social model. However, we are also mindful that much of the work on the PSI Report, which forms the basis for the initial implementation of the Convention, was undertaken prior to the UK becoming a signatory to this treaty.
155. We therefore **recommend** that the Strategy includes a strategic priority in relation to Health and Social Care. In our view, the inclusion of this strategic priority will reflect the 'social model' provided it is set out within a human rights framework as established by the purpose and intent of UNCRPD. Its inclusion will assist in ensuring the NI Executive meets its obligation to ensure people with disabilities have equal access to quality health care, as protected by Article 25 and various additional obligations set out throughout the UNCRPD.
156. Access to health and social care for people with disabilities is an essential tool to enable all with disabilities, including women, children, young people, older people, including those in residential or community care, who require acute and specialist services to enjoy the fundamental freedoms and rights set out in UNCRPD and other international treaties.
157. The Department of Health, Social Services and Public Safety has outlined proposals to reform health and social care including the option to use disability benefits to subsidise future provision. We are concerned that this approach may limit the degree of choice and control people with disabilities exercise to manage their care and support requirements.
158. Research by the NIHRC has identified gaps and inconsistencies in the regulatory and policy framework in Northern Ireland that governs access to publicly funded medical care for non-British/Irish nationals. The

research highlights how people are at risk of being erroneously denied GP registration or charged for hospital care. In addition, the current situation means that people with rights to special protection under international human rights law such as pregnant women and children (who are specifically referred to in Article 6 and 7 UNCRPD) are at risk of being denied free health care.

159. In addition, the Executive should take cognisance of the fact that in Northern Ireland HIV treatment (other than diagnosis and counselling) for persons classed as “overseas visitors” is not exempt from charges. This is despite proposals in England to ensure that from 1 October 2012 HIV treatment will be freely available to all persons living there regardless of residency status. A 2009 WHO policy brief notes that while the CRPD does not explicitly refer to HIV or AIDS in the definition of disability, *“States are required to recognize that where persons living with HIV (asymptomatic or symptomatic) have impairments which, in interaction with the environment, results in stigma, discrimination or other barriers to their participation, they can fall under the protection of the Convention.”*
160. Health care is a matter devolved to the NI Executive and the UK devolution context appears to have clarified that the issuing of regulations in relation to entitlements to health services is a matter for DHSSPS, not the Home Office⁷⁶. Given that the current residency restrictions on access to medical care have the potential to impact negatively on persons with disability, the Disability Strategy should ensure that the regulatory and policy framework on access to publicly funded medical care complies with international human rights standards including the UNCRPD.

⁷⁶ For example, Wales has changed its regulations which, unlike in England, include failed asylum seekers as a category exempt from charges. In Scotland, 2010 policy guidance also clarified that persons refused asylum are entitled to free health care. The Northern Ireland authorities have also recently issued a policy document, which notes that while immigration and asylum law are matters for UK government, immigration matters have substantial implications for government in Northern Ireland “as service deliverers, but also for people living here under immigration control. Consequently these issues are a legitimate concern of the Executive”.

General Recommendations

Vision and Purpose of the Strategy

161. We welcome the inclusion of reference to Article 1 of the UNCRPD in the draft strategy, alongside the vision of the PSI Working Group.
162. We **recommend** that the Executive revises the vision adopted by the PSI working group to explicitly position the Strategy within the general framework of the UNCRPD through the integration of reference to Article 1⁷⁷ of the Convention. This would emphasise a rights based approach that takes in to account the social model of disability. This may be clarified by the amalgamation of both Article 1 with relevant aspects of the PSI Working Group vision relating to the aspiration and intent for people with disabilities in Northern Ireland (page 21, paragraphs 2 & 3 of the consultation document).
163. We note that the purpose of the strategy has a focus on the '*needs*' of those with a disability. In line with the Convention, we recommend that the focus should be on ensuring the realisation of the '*rights*' of those with a disability and fulfilling the obligations placed on Government by the UNCRPD. People with disabilities should not be viewed as '*objects*' of welfare or medical treatment but rather as '*holders*' of rights. A '*human rights based*' approach to disability sees limitations imposed on persons with disabilities by social and physical environment as violations of their basic human rights. The Independent Mechanism strongly recommends adopting a human rights based approach that will serve to empower people with disabilities and ensure their full and effective participation in society on an equal basis with others.

⁷⁷ 'The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.

Delivery of State Obligations under the UNCRPD

164. While we note the reference to specific Convention articles under a range of specific strategic priorities, we also note that the draft Strategy states that, *“Not every Article will be referenced by the Strategy and Action Plan; however, the Action Plan will consider how we address those articles where there is no specific action.”*
165. The UNCRPD sets out the obligations and legal duties of States to ensure the equal enjoyment of all human rights by all persons with disabilities so that they can lead their lives as full citizens. As a State Party, the United Kingdom, including Northern Ireland, is required to periodically report on how it is meeting its obligations under the UNCRPD. On commencement of the first cycle it is likely that the examining committee will examine in detail how the UK, including the NI Executive, is meeting all of the obligations placed on it by the UNCRPD.
166. In preparation for the first cycle it would be both prudent and efficient to closely model the Strategy in line with the UNCRPD. Furthermore, the accompanying action plan should set out in detail how Government intends to meet its full range of obligations.
167. The fundamental importance and relevance of the UNCRPD was recently recognised by the Court of Appeal in England & Wales who referred to the UNCRPD when considering if a violation of Article 14 of the ECHR, as incorporated into UK law by way of the Human Rights Act 1998, had taken place. The court stated *“the [UNCRPD] has the potential to illuminate our approach to both discrimination and justification”*⁷⁸. This decision highlights the importance of ensuring that Government policies and strategies relating to disability are drafted in line with state’s obligations under the UNCRPD.
168. With regards to the Convention articles focussed on substantive themes (articles 10 to 30), while we recognise that some articles refer to reserved matters, the draft

⁷⁸ Burnip -v- Birmingham City Council & Anor [2012] EWCA Civ629. Available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2011/629.html>

Disability strategy does not currently make any clear linkage to the delivery of the following articles:

- Article 10 The right to life;
- Article 11 Situations of risk/emergencies etc.;
- Article 14 Liberty and security of person;
- Article 15 Freedom from degrading treatment etc.;
- Article 17 Protecting the integrity of the person;
- Article 18 Liberty of movement and nationality;
- Article 20 Personal mobility;
- Article 22 Respect for Privacy;
- Article 25 Health;
- Article 26 Habilitation and rehabilitation;
- Article 29 Participation in political and public life;
- Article 32 International cooperation.

169. While we recognise that the Executive may wish to prioritise certain areas for immediate action, we **recommend** that the Strategy should clearly set out how the Executive intends to deliver or contribute to the full range of obligations placed on the State under the Convention, now and/or in future action plans. Any prioritisation should focus on those measures, which will have the most significant positive impact on people with disabilities. In doing so, full account should be taken of the appropriate evidence base and the views of people with disabilities and their representative organisations.
170. The Independent Mechanism remains willing to assist OFMDFM in developing this Strategy in line with Government's obligations under the UNCRPD. Developing such an approach will assist in ensuring maximum human rights protection for all.

Cross Cutting themes

171. We welcome the setting out of strategic priorities and the identification of the importance of cross cutting themes.
172. The Strategy fails to refer to a number of the most significant articles contained within the Convention. For example, of the (cross-cutting) articles of general application within the Convention (Articles 5 to 9), the

draft Disability Strategy does not make any clear linkage to the delivery of:

- Article 5 Equality and non-discrimination;
- Article 6 Women with disabilities.

173. We **recommend** that the strategy should, as a minimum, encompass and explicitly include crosscutting themes, which reflect all articles of general application within the UNCRPD (notably, Articles 5 to 9 which focus on: equality and non-discrimination; women with disabilities; children with disabilities; awareness raising; and accessibility).

Multiple Identities

174. The Independent Mechanism **recommends** that the Strategy gives significant consideration to the issue of multiple identities. A number of specific issues have emerged in respect of disabled women, disabled elder persons and disabled persons from minority ethnic groups⁷⁹. However, these issues are not investigated in the Strategy.
175. We **recommend** that the strategy should give fuller consideration to issues of multiple identities.

Governance and Delivery Arrangements

176. We note the statement that ‘the Governance and Delivery arrangements for the Disability Strategy will, as far as possible, use existing engagement and governance mechanisms to avoid duplication’.
177. We **recommend** the explicit identification of these governance and delivery mechanisms in order to enable

⁷⁹ See for example: Equality Commission for Northern Ireland (2003): *Disabled Women in Northern Ireland: Situations, Experiences and Identity*; NIHRC (2012): Op Cit; The Department of Health’s webpage on black and minority ethnic mental health (<http://www.dh.gov.uk/en/Healthcare/NationalServiceFrameworks/Mentalhealth/BMEmentalhealth/index.htm>) or the Social Care Institute for Excellence guide to ‘Assessing the Mental Health Needs of Older People from Black and minority ethnic communities’ (<http://www.scie.org.uk/publications/practiceguides/practiceguide02/minority/index.asp>);

an assessment of whether existing practice in this area can be better adapted to reflect UNCRPD standards.

Monitoring Framework

178. We note the commitment to developing a monitoring framework within the first year of the Strategy⁸⁰ to assess how effectively actions are being delivered upon.
179. We **recommend** that any monitoring framework be developed alongside the Action Plan to ensure that actions/measures in the Plan are periodically reviewed against intended outcomes. In line with Article 4 of the UNCRPD it is important that persons with disabilities, including children with disabilities, are involved in the development and implementation of the Strategy. The monitoring framework should include a facility for persons with disabilities to raise issues that were perhaps unforeseen at the time the Strategy was developed.

Time Frame for Implementation

180. We note that the Strategy covers the period 2012-15 and commend the Executive for adopting a purposive approach. The time frame for implementation of the Strategy is shorter than similar strategies. Whilst this should mean that the positive effects of the strategy will be felt by its beneficiaries earlier, stakeholders have expressed some concern that achieving the stated strategic objectives will be difficult in the proposed timeframe. It is therefore important that the proposed action plan for the realisation of the Strategy is made available as soon as possible. We **recommend** that the action plan sets out discrete SMART milestones for each strategic priority so as to demonstrate what will be achieved across the life of the strategic plan.
181. Furthermore, we **recommend** that the Executive put in place a review process in order to evaluate the extent to which the objectives of the Disability Strategy have been met by the end of the proposed two/three year timeframe

⁸⁰ Office of the First Minister and the deputy First Minister (2012): *A Strategy to improve the lives of disabled people 2012-2015*, paragraph 5.2, page 34.

and consider the need for a further action plan to meet any objectives not realised⁸¹.

182. The Independent Mechanism would welcome further indications on how rights holders will be involved in the delivery and review stages and in bringing to account those responsible for implementation.

Research and Data Collection

183. The recent independent research commissioned by the Equality Commission, *Disability Programmes and Policies*⁸², concluded that the availability of robust data, information and statistics is central to evidence-based policymaking and to an effective monitoring process under Article 33 of the UNCRPD.
184. Article 31 of the UNCRPD requires the State to undertake the collection of appropriate information, including statistical and research data, to enable the formulation and implementation of policies to give effect to the Convention.
185. Recent research concluded that it was ‘currently extremely difficult to measure the effectiveness of public policy in relation to people with disabilities’ and this was ‘due to a lack of co-ordinated and effective monitoring to quantify the impact of policy change’⁸³.
186. Furthermore, the research found that statistics on policies and programmes were very rarely disaggregated to give information on persons with disabilities or on the type of disability⁸⁴.
187. We **recommend** that the Executive ensure that appropriately collected data relating specifically Northern

⁸¹ The Commission notes that the *UK Initial Report to on the UN Convention on the Rights of Persons with Disabilities* (Office for Disability Issues: 2011) refers to a ten-year life span for the PSI Strategy (on Disability) in Northern Ireland (paragraph 26, page 10). The Commission also notes that a number of other wide ranging, cross departmental strategies e.g. the Children’s Strategy 2006-16, the Accessible Transport Strategy 2005-15 have adopted a ten-year timeframe with targeted action plans and milestones therein.

⁸² Harper et al (2012), Op Cit.⁸²

⁸³ Ibid, page 253.

⁸⁴ Ibid, page 254.

Ireland is available in an appropriately disaggregated format.

188. We are aware of the considerable investment already undertaken by the Northern Ireland Executive in relation to the collection of data and research, through the 2008 Northern Ireland Survey of Activity Limitations and Disabilities (NISALD), to identify the key issues effecting people with disabilities and inform the PSI Report on Disability. We consider that much of this data obtained through the study has yet to be analysed and likely remains relevant to many of the challenges people with disabilities face today.
189. We therefore **recommend** that consideration should be given to the use of information collected through the NISALD study and other appropriate surveys as base-line data against which time-series data can be collected in order to measure progress in the implementation of the key objectives set out in the Strategy.
190. We **also recommend** that OFMDFM use up to date research and data to ensure that the strategy addresses the changing circumstances people with disabilities face today, including consideration of the impacts of the economic recession, welfare, health and social care reforms, cuts in public/community services that have taken place or are due to be implemented in the coming years.
191. In furtherance of their obligations under Article 31, we **recommend** that the Executive consider participation in a number of health surveillance systems which assist in the development and evaluation of public health policies around disabilities. Northern Ireland currently does not participate in a number of such systems, for instance there is no local EUROCAT Registry of congenital abnormalities. This is an issue which should be addressed.
192. Whilst the Children (Northern Ireland) Order 1995 makes provision for Health and Social Services Board to maintain a register of disabled children, it appears that such a register may not be being maintained. It is unclear

why this is the case and it is important that such registers are maintained to allow for appropriate planning and investment. We **recommend** that the Executive review the current status of registers such as that provided for by the 1995 Order to ensure they are being appropriately maintained.

Allocation of Appropriate Resources

193. As previously indicated we are concerned that the Executive has not identified discrete resources for the implementation of the Strategy, although this is a critical factor in delivering an effective national disability strategy. Without the allocation of adequate resources to the Strategy it is unlikely that many, if not all, of the strategic priorities will be realised.
194. A recent international comparative study undertaken to determine critical success factors for the effective delivery of national disability strategies, identified the requirement for government to have a clear understanding of the resources available to implement a disability strategy. In New Zealand, for example, an external review of the implementation of their national disability strategy found that one of the key reasons for lack of progress in the delivery of an effective strategy was the lack of dedicated implementation and funding plan for the strategy⁸⁵.
195. Professor Ron McCallum, Chair of the UN Committee on the Rights of Persons with Disabilities⁸⁶ in his foreword to the above-mentioned study, observes that “...*a successful national disability strategy must harness both appropriate legislative measures and sufficient funding to enable the plan to be implemented. In my view, no matter how well intentioned policy makers may be, without*”

⁸⁵ Flynn, Dr E., (2011): *From Rhetoric to Action – Implementing the UN Convention on Human Rights for Persons with Disabilities* - Chapter 4 ‘Critical Success Factors in Delivering A National Disability Strategy Lessons from International and Comparative Experience’, pages 197-286, (Centre for Disability Law, National University of Galway).

⁸⁶ The UN Committee has responsibility for ensuring that states who are signatories to UNCPRD are effectively implementing the Convention, including responsibility for investigating complaints under the Optional Protocol to the Convention, and evaluating evidence submitted to the Committee by non-state parties such as IMNI and non-governmental organisations as to whether states are in compliance with or in violation of the Convention’s Articles and Provisions.

adequate funding such programmes will remain aspirational” (added emphasis)⁸⁷.

196. We **recommend** that the Executive demonstrate a clear commitment to the strategy by adopting an **investment plan** to deliver resources so as to ensure enable the effective implementation of the strategy, delivering tangible improvements in the lives of people with disabilities.

⁸⁷Flynn, Dr E., (2011) Op Cit., pages xvii and xviii.

Concluding Summary

197. While welcome the Northern Ireland Executive's commitment to develop a Disability Strategy we are concerned that the strategy does not appear to address the full range of obligations placed upon Government by the UNCRPD.
198. With regards to the substantive focus on improving the lives of people with disabilities in Northern Ireland we would recommend that the strategy should commit the Executive to:
- reform disability equality legislation to provide stronger protection for people with disabilities;
 - deliver awareness raising initiatives that reflect the diversity of disability issues and maximise the participation of those with disabilities in society;
 - further address the barriers experienced by people with disabilities trying to access justice;
 - improve further the accessibility of public services, information, housing and transport;
 - ensure effective delivery of independent living and Transitions to adulthood;
 - promote access to education and sustainable employment, particularly in the context of the economic downturn;
 - enhance support measures for carers and recognition of the role they play in contributing to the quality of life of people with disabilities;
 - develop a new strategic priority in relation to Health & Social Care;
 - develop mitigating measures to any adverse impacts of welfare reform to ensure that people with disabilities are able to live independently and have an adequate standard of living and social protection.
199. With regards to the design and delivery of the strategy itself, we recommend that the Executive:
- revises both the 'vision' and 'purpose' of the Strategy to reflect more clearly the intent to fulfil the Executive's obligations under UNCRPD; and ensures

that the strategy contributes to the delivery of the *full* range of obligations placed on the State by the UNCRPD;

- secures the pro-active, effective participation of people with disabilities;
- revises a number of the Strategic Priorities so that there is a clearer focus and identification of specific and meaningful linked actions;
- ensures that the strategy addresses issues of multiple identity for people with disabilities;
- explicitly allocates appropriate resources to deliver the strategy; identifies explicit governance and delivery mechanisms; and develops an action plan and monitoring framework so as to ensure that the objectives of the Disability Strategy are met by the end of the proposed timeframe;
- collects sufficient data relating specifically to disability in Northern Ireland and publishes it in an appropriately disaggregated and accessible format.

Annex 1:

The Equality Commission and the Northern Ireland Human Rights Commission are jointly designated as the “Independent Mechanism” in Northern Ireland to promote, protect and monitor the implementation the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD).

The Equality Commission for Northern Ireland – Remit

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998. We are responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.

The Equality Commission’s remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards people with disabilities and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.

In addition to its role as Independent Mechanism under the UNCRPD, the Equality Commission’s general duties include:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting positive / affirmative action;
- promoting good relations between people of different racial groups;

- overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
- keeping the legislation under review; promoting good relations between people of different religious belief and / or political opinion.

The Northern Ireland Human Rights Commission – Remit

The Northern Ireland Human Rights Commission. is the national human rights institution for Northern Ireland working with other NHRIs all over the world through the international network of the United Nations to protect the most vulnerable and marginalised and ensure the promotion of the human rights of all people in Northern Ireland.

It is the role of the NIHRC to promote awareness of the importance of human rights in Northern Ireland, to review existing law and practice and to advise the government on what steps need to be taken to fully protect human rights in Northern Ireland.

In carrying out this work the NIHRC bases all of its work on international human rights standards, including those of the United Nations (UN) and the Council of Europe, that have been accepted by the United Kingdom. The Commission, in line with the UN 'Paris Principles' guidance of 1993, has 'A' status recognition at the UN as a national human rights institution with access to the Human Rights Council.

Duties and Powers

The NIHRC is an independent public body established by the Northern Ireland Act 1998. Its powers and duties are derived from sections 69 and 70 of the Northern Ireland Act 1998 and sections 14-16 of the Justice and Security (Northern Ireland) Act 2007.