

United Nations Convention on the Rights of Persons with Disabilities

Jurisdictional ‘Parallel’ Report on Implementation in Northern Ireland

WORKING PAPER (July 2014)

This working paper 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 (UNCRPD).



Executive Summary

Purpose

The information summarised in this working paper is being used to shape the input of the the Independent Mechanism for Northern Ireland (IMNI) to the creation of a UKIM 'List of Issues' submission to the UN Committee. The content of this document, with appropriate updates over time, will also form the basis of our input to a subsequent UKIM 'Parallel Report' in support of the UN Committee's examination of the UK State party.

We hope that publication of this working document, containing Northern Ireland specific detail, will raise awareness of key issues in Northern Ireland and drive action to by Government and others to address identified shortfalls, thereby advancing the full implementation of the UNCRPD in Northern Ireland.

Development

Our working assessment of key issues is based on extensive engagement with key stakeholders, and in particular disabled people and disabled people's organisations (DPOs). Our assessment is also based on our engagement with Government and our analyses of the UK Initial State Party Report; the Northern Ireland Executive contribution to the UK State Party Report; and the Northern Ireland Disability Strategy .

Summary of Key Gaps in the implementation of the CRPD in Northern Ireland

Whilst the main report provides a wide-ranging overview of the implementation of the UNCRPD in Northern Ireland, we would in particular draw attention to key gaps aligned to the following UNCRPD articles:

- Equality and non-discrimination (Article 5);
- Awareness-raising (Article 8);
- Equal recognition before the law (Article 12);
- Living independently and being included in the community (Article 19);

- Education (Article 24);
- Health (Article 25);
- Adequate standard of living and social protection (Article 28);
- Participation in public and Political Life (Article 29);
Access to Information and Statistics and Data Collection (Articles 9, 21 and 31).

The main report sets out further detail on the shortcomings of implementation of policies and programmes in Northern Ireland relevant to these articles, as well as highlighting key issues for further consideration and/or action.

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Introduction

The Independent Mechanism for Northern Ireland

The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission jointly perform the role, under Article 33 (2) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), of 'Independent Mechanism' in Northern Ireland (IMNI) to promote, protect and monitor the implementation the Convention. Together with the Equality and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC), we are designated as the United Kingdom Independent Mechanism (UKIM).

IMNI has contributed to the development of a UKIM submission to the UNCRPD Committee regarding a 'List of Issues' to be raised following the Initial UK State Report. We will also contribute to the preparation of a parallel report to the Committee for consideration alongside the UK Initial State Report in 2015.

Purpose of this Report

The information summarised in this working paper is being used to shape our input to the creation of a UKIM 'List of Issues' submission to the UN Committee.

With appropriate updates over time, the content of this document will also form the basis of our input to a subsequent UKIM 'Parallel Report' in support of the UN Committee's examination of the UK State party.

This report is therefore intended to:

- (i) raise awareness amongst stakeholders, including disabled people, DPOs, NGOs, public authorities, the Northern Ireland Executive and the UK Government of our working assessment of gaps in compliance in Northern Ireland relative to the requirements of convention articles.
- (ii) provide information which can be used by DPOs, NGOS, disabled people or other interested individuals, or coalitions of these, to

inform the development of their own parallel/shadow reports to the United Nations Committee on the Rights of Persons with Disabilities.

We hope that this working document; any subsequent UN 'list of issues' and associated response from the UK State party; and the eventual concluding remarks of the UN Committee in 2015 (following formal examination of the UK) will engender further debate and action to by Government and others to address identified shortfalls, and advance the full implementation of the UNCRPD in Northern Ireland.

Scope and Structure of the report

This report covers matters which are the responsibility of the UK Government as well as those which have been devolved to the Northern Ireland Assembly. The report is largely structured to reflect that adopted by the UK in its Initial Report on UNCRPD.

This working paper includes our assessment of key gaps in the implementation of the Convention in Northern Ireland and an analysis of the implementation of those UNCRPD articles about which available information suggests that there are significant concerns .

We have included key themes for further attention by key stakeholders, including the Government, Northern Ireland Executive and relevant public authorities; the UN Committee and disabled people and their representative organisations.

Information and Engagement: Developing this Report

This report is based on our analyses of the UK Initial State Party Report¹, the Northern Ireland Executive contribution to the UK State Party Report² and the Northern Ireland Disability Strategy³.

This report also draws on the significant work undertaken in relation to the Convention by each of the Commissions since 2010.

- IMNI has been actively involved in engaging civil society, and in particular disabled people and disabled people's organisations (DPOs) in Northern Ireland within the monitoring process since the UK ratified the UNCRPD. For example, IMNI has held a number of evidence gathering workshops with stakeholders on particular CRPD Articles e.g. Article 27 Work and employment. IMNI also facilitated Marianne Schulze, Chairperson of the Austrian Monitoring Framework, to meet with DPOs to discuss the examination process and how DPOs could best engage in the process.
- There was also a series of events throughout Northern Ireland with disabled people and DPOs to identify and refine the key issues for inclusion within the UKIM submission.
- In 2010 and 2013, IMNI also commissioned independent research on the implementation of the UNCRPD in Northern Ireland⁴ which has been used to inform this report.

¹ CRPD/C/GBR/1 (2011): 'Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of State Parties Due in 2011 – United Kingdom of Great Britain and Northern Ireland'. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2f1&Lang=en

² Northern Ireland Executive (2012): 'Northern Ireland Executive's Contribution to the UK Government Report to the United Nations Committee'. Available at:

http://www.ofmdfmi.gov.uk/executives_contribution_to_the_uk_government_report_to_the_united_nations_committee_-_amended.pdf

³ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015' (Belfast OFMDFM). Available at: <http://www.ofmdfmi.gov.uk/disability-strategy-2012-2015-revised-010313.pdf>

⁴ 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', (Belfast: Equality Commission NI).

Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): '[Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD](#)' (Belfast: Equality Commission NI).

- In addition, this report draws on our legal casework, treaty monitoring, research, responses to government consultations and policy work.
- We have also taken into account reports from Disabled Persons' Organisations (DPOs), Non-Governmental Organisations (NGOs), academic sources and regulators.

Summary of Key Gaps in the implementation of the CRPD in Northern Ireland

Whilst this report provides a wide-ranging overview of the implementation of the UNCRPD in Northern Ireland, it is important to highlight a number of key gaps aligned to the following UNCRPD articles:

- Equality and non-discrimination (Article 5);
- Awareness-raising (Article 8);
- Equal recognition before the law (Article 12);
- Living independently and being included in the community (Article 19);
- Education (Article 24);
- Health (Article 25);
- Adequate standard of living and social protection (Article 28);
- Participation in public and Political Life (Article 29);
- Access to Information and Statistics and Data Collection (Articles 9, 21 and 31).

Information on the shortcomings of implementation of policies and programmes in Northern Ireland relevant to these articles, and consideration of the fulfillment of rights under other articles, is set out below.

Implementation of the UNCRPD in Northern Ireland

Article 5 – Equality and non-discrimination

Law reform

The Northern Ireland Disability Strategy is silent on legislative reform.

As a result of the implementation of the Equality Act 2010⁵, the disability equality legislation in Great Britain (GB) has been harmonised and strengthened providing greater level of protection for disabled people in England, Scotland and Wales⁶.

The Equality Commission for Northern Ireland (ECNI) has called on the Northern Ireland Executive through the Office of the First and Deputy First Minister (the designated focal point for the implementation of the Convention in Northern Ireland) to make changes⁷ to disability equality legislation in Northern Ireland so as to, at minimum, keep pace with positive legislative changes in Great Britain⁸. In addition to issuing 'Strengthening Protection for Disabled People Proposals for Reform'⁹, ECNI has also

⁵ The Equality Act 2010 brings together equality legislation across a range of equality grounds which forms the basis of anti-discrimination law in Great Britain, including the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 and three statutory instruments protecting discrimination in employment on grounds of religion or belief, sexual orientation and age. The Act simplifies, harmonises and strengthens equality legislation in Great Britain and provides a range of additional protections for disabled people.

Available at: http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

Under s.217, with limited exceptions, the Act does not apply to Northern Ireland (see:

<http://www.legislation.gov.uk/ukpga/2010/15/section/217>)

⁶ United Kingdom (UK) refers to Great Britain (England, Scotland and Wales) and Northern Ireland

⁷ Equality Commission for Northern Ireland (March 2012): 'Strengthening Protection for Disabled People Proposals for Reform - Full Report', (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Research-investigations>

⁸ These include remedies against perceived and associative discrimination and indirect discrimination.

⁹ Equality Commission for Northern Ireland (2012): 'Strengthening Protection for Disabled People Proposals for Reform', (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Research-investigations>

The proposed amendments seek to:

- simplify and bring consistency to the disability equality legislation (at present UK wide public authorities, employers and service providers have to deal with the burden of complying with often complex differences between disability equality law in GB and Northern Ireland).

recently published an expert legal briefing¹⁰ 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 Northern Ireland (NI)¹¹.

Issues to consider: What measures have been taken to: (a) ensure the prohibition of all forms of disability discrimination and guarantee to disabled people equal and effective legal protection against discrimination on all grounds in Northern Ireland?; and (b) at a minimum ensure that the positive amendments to legislative protection in Britain, are available in Northern Ireland?

Damages for disability discrimination in school education

In Northern Ireland, discrimination cases in the provision of school education, which do not involve disability, are dealt with in the County Court; they are empowered to award all remedies available in the High Court, which includes damages for any loss and compensation for injury to feelings.

-
- amend the definition of disability by removing the list of capacities thereby making it easier for disabled people to fall within the definition and avail of the protections of disability equality law;
 - improve protection against direct and indirect discrimination, taking account of developments in GB case law;
 - provide protection for carers of disabled people and those perceived as being disabled;
 - provide protection against harassment in accessing goods, facilities and services;
 - prohibit pre-employment disability questions, except in specific circumstances;
 - extend the duty on further and higher education providers to provide auxiliary aids and services to schools;
 - provide additional reasonable protections for disabled tenants.

According to the report on the consultation about the Northern Ireland Executive's Disability Strategy 2012-2015, 82% of consultees supported the Equality Commission's call for legislative reform of disability equality legislation. To date no action has been taken by the Northern Ireland Executive. Please see analysis of responses to the consultation on 'A Strategy to improve the lives of people with disabilities 2012 –2015', page 33. Available at: <http://www.ofmdfmi.gov.uk/consultation-on-draft-disability-strategy-2012-2015-analysis-report-on-responses.pdf>

¹⁰ Casserley, C. (June 2013): 'The impact of Malcolm v London Borough of Lewisham and Northern Ireland equality legislation', (Independent legal briefing for Equality Commission NI). Available at: <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Research-investigations/Legal-briefing-on-Malcolm-case-full-text>

¹¹ See also: Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – Draft Final Report 11 March 2014, pages 33-37.

However, disability cases go to the Special Educational Needs Tribunal (SENDIST) which are not empowered to make compensation for discrimination or harassment.

This means that there can be situations where one child could be harassed because of race and one because of disability and the first child can seek compensation¹², whilst the second child cannot¹³.

Issues to consider: What measures have been taken to monitor and remedy the different treatment and disadvantage experienced by disabled children in Northern Ireland seeking redress against discrimination in schools with regard to access to compensation?

The issues above are also relevant to Article 13, access to justice.

Article 6 - Women with disabilities

Although the Northern Ireland Disability Strategy makes reference to Article 6 in the theme 'Children, Young People and Family'¹⁴ there are no associated actions listed¹⁵ and Article 6 is not mentioned in any of the Government's individual disability specific strategies in Northern Ireland¹⁶ e.g. the Physical and Sensory Disability Strategy.

Access to sexual health and maternity services

Research in Northern Ireland has identified areas of concern in respect to access for disabled women to sexual health and maternity services¹⁷ with

¹² See paragraphs 18-20 and 54 of the Race Relations (Northern Ireland Order) 1997. Available at: <http://www.legislation.gov.uk/nisi/1997/869/contents/made>

¹³ See paragraph 22 (4) of the Special Educational Needs and Disability Order 2005. Available at: <http://www.legislation.gov.uk/nisi/2005/1117/article/22/made>

¹⁴ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015' (Belfast OFMdfM), pages 20. Available at: <http://www.ofmdfmi.gov.uk/disability-strategy-2012-2015-revised-010313.pdf>

¹⁵ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012 –2015', page 20. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁶ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – Draft Final Report 11 March 2014', page 38.

¹⁷ 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

recommendations that consideration be given to the specific needs of disabled women with respect to the latter and that awareness training for health service staff was needed in respect of the sexual health and well being of people with disabilities (including learning disabilities).

Data on women and girls

More information is needed on the circumstances of women and girls with disabilities in Northern Ireland (see Article 31 below).

Issues to consider: What specific measures have and will be taken to ensure that women with disabilities in Northern Ireland have appropriate access to maternity services and that health service staff providing sexual health services have received disability rights and awareness training.

Article 7: Children with Disabilities; and Article 23: Respect for home and the family

Strategies to address the disadvantage experienced by disabled children

Whilst the Northern Ireland Disability Strategy makes reference to the development of plans through the Delivering Social Change Framework to

the United Nations Convention on the Rights of Persons with Disabilities in Northern Ireland', paragraph 5.2.4.1, page 60 (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

See also:

Department of Health, Social Services and Public Safety (2011): 'Draft Equality Plan' v1, January 2011, (Belfast: DHSSPS). Available at: http://www.dhsspsni.gov.uk/dhssps_draft_equality_action_plan.pdf

Department of Health, Social Services and Public Safety (2004): 'Equalities and Inequalities in Health and Social Care – A Statistical Overview Report, Inequalities and unfair access issues', (Belfast: DHSSPS).

Available at: <http://www.dhsspsni.gov.uk/stats-inequalities>

Equality Commission for Northern Ireland (2003): 'Disabled Women in Northern Ireland: Situation, Experiences and Identity' (Belfast: Equality Commission NI). Available at: <http://wwda.org.au/wp-content/uploads/2013/12/diswomni2003.pdf>

Simpson, A., Lafferty, A. and McConkey, R. (2006): 'Out of the Shadows: Our voices aren't going into the dark anymore: A report of the sexual health and wellbeing of people with learning disabilities in Northern Ireland', (FPA Newnorth Print, Bedfordshire).

ensure the rights of children with disabilities¹⁸, no specific actions or targets are established¹⁹.

Furthermore, concern has been expressed at the lack of connection between the Disability Strategy and the mainstream 'Delivering Social Change for Children and Young People' strategy²⁰.

Issues to consider: What strategies have been adopted to eliminate the disadvantages experienced by disabled children in Northern Ireland and what evidence is there of the success of these strategies?

Poverty

Research suggests that 57% of disabled children in Northern Ireland are living in poverty compared to 37% of those without disabilities²¹.

Issues to consider: What initiatives have been taken to reduce the number of disabled children living in poverty in Northern Ireland and what is the impact these initiatives have had?

Childcare

There is currently no strategy in Northern Ireland to ensure the availability of affordable childcare²². Research in Northern Ireland carried out by Employers For Childcare in 2011 found that parents of disabled children find it difficult to identify appropriate childcare facilities for their child that

¹⁸ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015' (Belfast OFMdfM), pages 26. Available at: <http://www.ofmdfmi.gov.uk/disability-strategy-2012-2015-revised-010313.pdf>

¹⁹ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD', page 63 (Belfast: Equality Commission).

²⁰ Children in Northern Ireland (2014): 'Briefing Paper and Response to Delivering Social Change for children and Young People consultation document', page 22.

²¹ Children with Disabilities Strategic Alliance (2012): 'CDSA Manifesto', page 31 (Belfast: CSDA). Figures are based on deprivation measure: McLaughlin, E. and Monteith, M. (2006): 'Child and Family Poverty in Northern Ireland' (Belfast: Equality and Social Need Division, Office of the First Minister and the deputy First Minister).

²² Whilst the NI Executive has published a 'Programme for Affordable and Integrated Childcare Strategic Framework and Key First Actions', (available at: <http://www.northernireland.gov.uk/bright-start-strategic-framework-key-actions.pdf>), a finalised Strategy has not yet been published.

ensures the child's development. As a result many parents rely on informal sources of care or are unable to take up employment²³.

Issues to consider: What measures have been taken in Northern Ireland to ensure that children with disabilities and their parents have access to affordable childcare provision which nurtures the child's development, including how, if at all, this will be taken forward via the Childcare and/or Disability Strategies?

Right to express views

Children with disabilities in Northern Ireland are generally excluded from the decision making processes concerned with delivering government measures policies and programmes concerned with their health, economic and social well being²⁴.

Consequently children with disabilities face a range of barriers when accessing services including the benefit of age appropriate services, within areas such as education, health and social care²⁵.

The Northern Ireland Executive's Disability Strategy²⁶, which the Office of the First Minister and the Deputy First Minister advises will provide a mechanism for future reporting on the Government's obligations under the Convention, does not include a commitment to involve children and young people with disabilities in the development, monitoring or implementation of the strategy.

Data on children and young people

²³ Employers for Childcare (September 2011): 'Childcare for All? Consulting Families of Children with Disabilities and/or Special Needs about Childcare and Employment Report', pages 69 – 71. Available at: <http://vouchers.employersforchildcare.org/media/Childcare%20for%20All%20-%20Website%20Copy%20-%20Oct.pdf>

²⁴ Northern Ireland Commissioner for Children and Young People (2011): 'Barriers to Effective Government Delivery for Children in Northern Ireland', paragraph 1, page 62. Available at: [Cached](#)

²⁵ Equality Commission for Northern Ireland and the Northern Ireland Commissioner for Children and Young People (April 2012): 'Strengthening Protection for Children and Young People – Legislative Reform', (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Research-investigations>

²⁶ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 6. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

Research is needed on the needs and circumstances of children and young people with disabilities (see Article 31 below).

Issues to consider: What measures have been taken to include disabled children and young people in Northern Ireland in the development of Government policy initiatives, such as the Disability Strategy?

Support for parents

Concern has been expressed regarding the adequacy of support provided to parents with disabilities and parents with a disabled child, including the provision of respite care²⁷.

Issues to consider: What measures have been taken to ensure that parents with disabilities and parents with a disabled child in Northern Ireland have adequate support, including the provision of respite care, to enable them to successfully raise children to fulfil their full potential?

Article 8: Awareness Raising

Prejudice and negative attitudes

Despite concerning levels of negative attitudes towards disabled people in Northern Ireland²⁸, no systematic strategy has been developed by the Northern Ireland Executive to seek to reduce these. Although the Disability Strategy identifies awareness-raising as one of its themes under two

²⁷ 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', pages 73-61, (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

²⁸ 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', pages 73-75, (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

strategic priorities²⁹, there are no targets set for these and it is unclear how these will be met³⁰ whilst it should also be noted that resources have not been unequivocally allocated to this or any of the other six disability specific work streams in the strategy³¹.

A survey of public attitudes in Northern Ireland conducted by the Equality Commission in 2011 found that in terms of the three types of disability considered, mental ill-health evoked the greatest number of negative responses, with 26% saying they would mind (a little or a lot) having a person with mental ill-health as a work colleague, while 24% and 37% respectively would mind having this person as a neighbour or as an in-law³².

A survey of public attitudes in Northern Ireland in 2009 found that 45% of respondents thought that attempts to give equal rights to disabled people had gone too far or were about right³³.

The awareness raising proposed in the Northern Ireland Disability Strategy does not fulfil the requirements of Article 8 to raise awareness 'throughout society', assuming that this would require the development of systematic interventions to raise awareness in society through engaging with a wide range of sectors e.g. the media, the education system, the business and trade union sectors, faith groups and political parties.

²⁹ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015', page 16 (Belfast: OFMdfM). Available at: <http://www.ofmdfmi.gov.uk/disability-strategy-2012-2015-revised-010313.pdf>

³⁰ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – [Final Report 2014](#)', page 45.

³¹ Lead Departments will be required to engage in a tendering process to bid for resources to be allocated to the work stream for which they are responsible. Departmental bids to the commitments Delivering Social Change Fund for any of the 7 disability work streams will be set against other Programme for Government priorities and concerned with social disadvantage, poverty and inequality as set out in Annex 1 accompanying the Strategy.

³² Equality Commission for Northern Ireland (2011): 'Do You Mean Me? Discrimination, attitudes and experience in Northern Ireland', page ii, (Belfast: Equality Commission NI). In the 2008 survey the findings were 17%, 16% and 25% respectively. Available at: <http://www.doyoumeanme.org/2011-survey/>

³³ ARK (2009): 'Northern Ireland Life and Times Survey'. Available at www.ark.ac.uk

Issues to consider: What proposals have been developed and resourced regarding comprehensive and effective awareness raising measures with a view to creating more positive attitudes towards people with disabilities in Northern Ireland?

Statutory Duty to promote positive attitudes

In Northern Ireland, public authorities are required, under Section 49 of the Disability Discrimination (NI) Order 2006, to submit disability action plans to the Equality Commission showing how they propose to fulfil the disability duties - to have due regard to the need to promote positive attitudes towards disabled people and to promote their participation in public life (together referred to as the 'positive disability duties' - in relation to their functions³⁴.

An Equality Commission report in 2009³⁵ noted that there was a lack of focus on monitoring and evaluation of disability action plans. None of the 21 public authorities assessed in research in Northern Ireland³⁶ reported having systems in place to monitor and evaluate their disability action plan as a whole. Indeed, one public authority concluded that "our size militates against any formal measure

Issues to consider: What measures will be taken to ensure that public authorities in Northern Ireland effectively implement the positive disability duties?

³⁴ Further details are available in: 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', (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/Publications?subject=Disability&type=Guides&year=2007>

³⁵ Equality Commission for Northern Ireland (2009): 'Effectiveness of the Disability Duties, Review Report', (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/EffectivenessofDisabilityDutiesReviewreport2010.pdf?ext=.pdf>

³⁶ McIlwhan, R., Rogers, S. And Bridge, S. (2009): 'Evaluating the Effectiveness of the Disability Discrimination (NI) Order', page 19, (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/Publications/Delivering-Equality/Effectiveness-of-Disability-duties-Review-report?ID=849>

Article 9: Accessibility

Whilst the Northern Ireland Disability Strategy refers to Article 9 in Strategic Priority 5 aiming to 'Eliminate barriers in the physical environment, goods and services so that disabled people can participate fully in all areas of life'³⁷, no specific actions or targets are identified in support of this priority³⁸. Likewise, the Physical and Sensory Disability Strategy³⁹ and the Bamford Action Plan 2012-2015⁴⁰ refer to the need to improve accessibility but do not provide further details as to how this will be achieved⁴¹.

Statistics or information in relation to complaints about accessibility are not centrally available as fulfilment of the legal duties relating to accessibility is not solely inspected by any one body in Northern Ireland⁴².

Physical Access

A baseline audit of accessibility to services in Northern Ireland for people with a disability (2013) which examined three aspects of access - Physical, Customer Service and Information - across five cities and towns, found that the benchmark score was 2.43 on a scale of 1 to 4 (where 3 is good or satisfactory). The reasons given by disabled people for avoiding or not

³⁷ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 17. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

³⁸ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – [Final Report 2014](#)', page 72.

³⁹ Department of Health, Social Services and Public Safety (2012): 'Physical and Sensory Disability Strategy and Action Plan 2011-2015', page 86 (Belfast: DHSSPS).

⁴⁰ Department of Health, Social Services and Public Safety (2012): 'Delivering the Bamford Vision – The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015', page 46 (Belfast: DHSSPS). Available at: www.dhsspsni.gov.uk/2012-2015-bamford-action-plan.pdf

⁴¹ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – [Final Report 2014](#)', page 74.

⁴² Disabled people have a number of other ways to complain including to the service provider directly, through a solicitor, a service regulator or ombudsman, or to an advocacy, advice or voluntary group. Records are sometimes maintained by such groups although there is no consistent system of recording and few published figures.

using services were physical barriers (53%), customer service (33%) and information provision⁴³.

Internet based information

The Internet Access Quarterly Update 2011 a UK-wide report found that groups of adults who were more likely to have never used the Internet included people over 65 and people with a disability.

There were 3.98 million disabled adults who had never used the Internet.

This represented 34.5% of those who were disabled and just under half of the 8.20 million of the population who had never used it.

The region where people were least likely to have used the Internet was Northern Ireland, where 28.6 per cent had never done so⁴⁴.

Research on the effectiveness of the disability duties in December 2009 highlighted a lack of accessible formats not just in relation to disability action plans, but more widely and that this creates barriers to participation⁴⁵.

Information from a focus group of representatives from voluntary organisations and disabled people held for research commissioned by the Equality Commission for Northern Ireland reported that they had found some government websites inaccessible⁴⁶.

⁴³ Adapt NI with BMKent Consulting (April 2013): 'ABC audit benchmark change – State of disability access report 2013', (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Audit-Benchmark-Final-Reportssubmit20June13.pdf>.

⁴⁴ Office for National Statistics (May 2011): 'Internet Access Quarterly Update 2011'. Available at: <http://www.ons.gov.uk/ons/rel/rdit2/internet-access-quarterly-update/index.html>

⁴⁵ Equality Commission for Northern Ireland (2009): 'Effectiveness of the Disability Duties, Review Report', (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/EffectivenessofDisabilityDutiesReviewreport2010.pdf?ext=.pdf>

⁴⁶ 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' (Belfast: Equality Commission NI). Problems were reported with the inability to change fonts, broken or incorrect links, no search boxes, and the inability to change colours. Participants also reported that some websites did not work with the technologies used by disabled people, while other reported the absence of text phone numbers on a number of sites. Participants commented that accessibility requirements varied with the disability of the person. Form filling online was reported as a problem by participants as they could not resize forms. It was also commented that signposting was poor on many websites and that there was little logic in their layout. It was further reported that incorrect information was given in websites, for example

In relation to the work stream on digital inclusion identified in the Disability Strategy⁴⁷ it should be noted that these resources have not been unequivocally allocated to this or any of the other six disability specific work streams.

Attitudes

Research commissioned by the Equality Commission for Northern Ireland has found that ‘Disabled people experience barriers to accessing everyday services such as transport. These barriers are not just about physical access to buildings and vehicles. For many people poor service and the attitudes of staff providing services can be a major deterrent to using services’⁴⁸.

Reports by the Inclusive Mobility Transport Advisory Committee (IMTAC) have concluded that, in relation to transport, that whilst physical access to transport in Northern Ireland is improving, the attitudes of those providing services remains a key barrier⁴⁹.

There is little publically available and/or accessible information in relation to the training service provider staff receive, or evaluations of its effectiveness⁵⁰.

incorrect phone numbers. Available at:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

⁴⁷ The Northern Ireland Disability Strategy commits the Department of Finance and Personnel (at page 27) to produce a plan with specific actions to promote digital inclusion for people with disabilities based on the Nidirect Assisted Digital Strategy which is currently being drafted. According to the Strategy, this may also include the development of a Delivering Social Change Signature Programme on Digital Inclusion.

⁴⁸ 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’, (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

⁴⁹ Inclusive Mobility Transport Advisory Committee (2009): ‘Disability training – Good practice guidelines for transport providers’ (cached).

⁵⁰ 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’, paragraph 5.5.4.4, page 106, (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

Whilst it is reported that in the majority of Public Sector Disability Action Plans, Disability Awareness training is ongoing, there is little monitoring of the outcomes⁵¹. This makes it difficult to assess the effectiveness of the training provided by Government departments and agencies in Northern Ireland.

Printed information

A number of studies have highlighted that access to information is an area of concern to disabled people⁵². The most recent report, a review of an investigation into the accessibility of health information for people with a learning disability in Northern Ireland (2013), found that a strategic and standardised approach to the development of such information, including accessible appointment letters, had not been realised⁵³.

Although guidelines⁵⁴ to ensure that the specific communication needs of individuals are met within hospital settings had been produced, organisations representing people with a learning disability have expressed concerns about their effectiveness in practical terms. It is thought that there is a lack of awareness amongst both service users and health care staff

⁵¹ McIlwhan, R., Rogers S. And Bridge, S. (2009): 'Evaluating the effectiveness of the Disability Discrimination (NI) Order 2006 Duties', (Belfast: Equality Commission NI).

⁵² Royal National Institute for the Deaf and the British Deaf Association (2009): 'Access to Public Services for Deaf Language users'.

Equality Commission for Northern Ireland (2008): 'Formal Investigation under the Disability Discrimination legislation to evaluate the accessibility of Health Information in Northern Ireland for people with a Learning Disability, June 2006 to December 2007, (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/Delivering-Equality/Investigations.aspx>

Equality Commission for Northern Ireland (June 2013): 'Review of the Formal Investigation into the Accessibility of Health Information for people with a Learning Disability in Northern Ireland – Summary', (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/Delivering-Equality/Investigations.aspx>

⁵³ Equality Commission for Northern Ireland (June 2013): 'Review of the Formal Investigation into the Accessibility of Health Information for people with a Learning Disability in Northern Ireland – Summary', page 5, (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/Delivering-Equality/Investigations.aspx>

⁵⁴ Guidelines and Audit Implementation Network (June 2010): 'Guidelines on Caring for People with a Learning Disability in General Hospital Settings'. Available at: http://www.gain-ni.org/flowcharts/downloads/gain_learning.pdf

and that a lack of resources is limiting progress in its implementation in Northern Ireland⁵⁵.

Issues to consider: What concrete measures will be taken to ensure accessibility for disabled people in Northern Ireland and what steps will be taken to evaluate the effectiveness of these measures?

Article 10: Right to Life

The Northern Ireland Disability Strategy does not include any specific reference to Article 10.

Suicides

In 2011 there were 289 suicides in Northern Ireland,⁵⁶ the highest figure in the United Kingdom⁵⁷ and one that is unacceptable⁵⁸. Northern Ireland has a disproportionately high rate of mental illness with 25% higher overall prevalence of mental health problems than in England⁵⁹.

One factor which is broadly accepted to have contributed to the prevalence of mental health problems amongst the general population in Northern Ireland is the history of violent conflict⁶⁰. Research shows that individuals who experienced a conflict-related traumatic event relating to the “Troubles” are more likely to have a mental illness at some point in their lives⁶¹.

⁵⁵ Equality Commission for Northern Ireland (June 2013): Op Cit.

⁵⁶ NISRA key statistics 2011 - 289 were suicides. Available at:

http://www.nisra.gov.uk/Census/key_report_2011.pdf

⁵⁷ Office for National Statistics (2012): ‘Suicides in the United Kingdom 2011’ (ONS Statistical Bulletin) Available at: <http://www.nisra.gov.uk/demography/default.asp31.htm>

⁵⁸ This was acknowledged by the Health Minister. See: <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-dhssps-260612-poots-launches-refreshed.htm%20>

⁵⁹ Department of Health, Social Services and Public Safety for Northern Ireland (2012): ‘Fit and Well – Changing Lives – A Ten Year Public Health Strategic Framework for Northern Ireland 2012-2022. A Consultation Document’, page 35, (Belfast: DHSSPS). Available at: <http://www.dhsspsni.gov.uk/fit-and-well-consultation-document.pdf>

⁶⁰ Oral Statement by Chief Constable of the PSNI to the Northern Ireland Affairs Committee of the House of Commons. See Hansard Script 24 January 2012 HC 877-i;

⁶¹ Bamford Centre for Health & Wellbeing at the University of Ulster and the Northern Ireland Centre for Trauma & Transformation and Compass (2011): ‘Troubled consequences: A report on the mental health

The current Suicide Prevention Strategy for Northern Ireland is due to conclude in 2014. IMNI is aware that the Department of Health, Social Services and Public Safety is currently developing a revised suicide prevention strategy that will also seek to address general matters of mental health. IMNI considers that an integrated wide ranging strategy tackling the factors influencing the high rate of suicide and mental health problems, including the conflict related matters, should be developed for Northern Ireland.

Issues to consider: What assessment has there been of the factors influencing high levels of suicide and mental health problems in Northern Ireland and how will the revised strategy seek to address these factors?

Article 11 – Situations of risk and humanitarian emergencies

The Northern Ireland Executive's Contribution to the UK Government Report does not refer to Article 11 nor does the UK Initial State Party Report specifically mention Northern Ireland in the section dealing with its obligations under this article⁶². The Northern Ireland Disability Strategy references two PfG targets against Article 11, namely:

- Improving community safety by tackling anti-social behavior; and
- Introduce a package of measures aimed at improving safeguarding outcomes for Children and Vulnerable Adults⁶³.

impact of the civil conflict in Northern Ireland', (Belfast: Commission for Victims and Survivors). Available at: <http://icrt.org.uk/wp-content/uploads/2012/11/2012-Dec-Troubled-Consequences.pdf>

⁶² Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCPRD – [Final Report 2014](#)', page 81.

⁶³ Office of the First Minister and the Deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015; pages 45 and 50.(Belfast: OFMDFM). Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

However, it is unclear how these relate to planning for situations of risk including situations of armed conflict, humanitarian emergencies and the occurrences of natural disasters, which are the focus of Article 11.

Although the Emergency Planning Standard 2013⁶⁴ acknowledges that emergency plans should take into account Section 75 of the Northern Ireland Act 1998, the Human Rights Act 1998 and the Disability Discrimination Act 1995 to make arrangements for persons with disabilities, also states that it may be necessary for health and social care organisations to 'prioritise actions and resources which will provide the most benefit for the greatest number of people'. This caveat poses a potential conflict with the requirement of Article 11 to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk

Issues to consider: What measures have been taken by Government Departments in Northern Ireland, including consultation with persons with disabilities and disabled people's organisations, to ensure that needs of disabled people have been addressed in planning for situations of risk and humanitarian emergencies?

Article 12: Equal recognition before the law

Mental Capacity Bill

There are currently proposals for significant reform of the law in Northern Ireland governing mental capacity and mental health in the areas of health, welfare and finance⁶⁵.

The Northern Ireland Disability Strategy makes a brief reference to the Mental Capacity Bill with respect to Article 12 under that theme of 'Justice

⁶⁴ Department of Health, Social Services and Public Safety (2013): 'Emergency Planning Standard', pages 4-5 (Belfast: DHSSPS).

⁶⁵ Department for Health, Social Services and Public Safety (May 2014): 'Draft Mental Capacity Bill (NI) consultation document'. Available at: <http://www.dhsspsni.gov.uk/showconsultations?txtid=68523>

and Community Safety' and to the Programme for Government (PfG) commitment on 'access to justice'⁶⁶.

The introduction of provisions for all persons who lack capacity to make decisions for themselves in respect of their health, welfare and finances was recommended by the Bamford Review⁶⁷ as the way of achieving this goal. The Review also recommended that the new single legislative framework should be based on agreed principles designed to respect the dignity of the person requiring decisions to be made on their behalf (autonomy, justice, benefit and least harm)⁶⁸.

It is proposed that the new legislation will provide for a presumption of capacity in all persons over the age of 16, regardless of them having or not having a disability. The draft Bill allows individuals to put in place arrangements for a nominated attorney to make decisions on their behalf should they become mentally incapable. Where an attorney is not in place an individual may intervene and make a decision on their behalf, provided certain conditions are in place.

Such an individual, whether a lay person or a professional, will be required to assure him or herself that an individual is incapable of making a decision even with the provision of support. Where an intervener is taking a decision on behalf of a person who is incapacitated they must do so on the basis of the individual's best interest. In determining an individual's best interests an intervener must consider their past and present wishes and feelings, their values and the other factors which they would consider if they were able to make the decision.

⁶⁶ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 23. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

⁶⁷ Department of Health, Social Services and Public Safety (August 2007): 'The Bamford Review of Mental Health and Learning Disability (Northern Ireland) – A Comprehensive Legal Framework for Mental Health and Learning Disability' (Belfast: DHSSP). See Chapter 6: 'A Proposed Comprehensive Framework for Substitute Decision-Making' pages 53-64 and summary of recommendations page 83-89. Available at: <http://www.dhsspsni.gov.uk/cl-framework>

⁶⁸ Department of Health, Social Services and Public Safety (May 2014): Op cit, paragraph 1.5, page 6.

The proposals broadly reflected the law of England & Wales, the Mental Capacity Act 2005. A Parliamentary Committee considering implementation of the 2005 Act in England & Wales found that “Best interests decision-making is often not undertaken in the way set out in the Act: the wishes, thoughts and feelings of P are not routinely prioritised”⁶⁹. Evidence presented to the Parliamentary Committee suggests that paternalistic attitudes have persisted⁷⁰. Furthermore there are concerns, that the current and proposed frameworks do not provide sufficient protection against financial abuse⁷¹. As proposals for NI are largely based on the 2005 Act these concerns are also relevant for NI.

Issues to consider: What further actions will be undertaken to ensure that new legislative provisions in Northern Ireland:

- (i) adequately respect the will and preferences of all persons with a disability and tackle paternalistic approaches;**
- (ii) develop and promote models of support for decision making together with associated support services;**
- (iii) put in place sufficient safeguards to avoid financial and physical abuse;**
- (iv) are accompanied by a robust implementation policy, including training for all state actors, to ensure that disabled people have full access to their rights?**

⁶⁹ Select Committee on the Mental Capacity Act 2005 ‘Mental Capacity Act 2005: post-legislative scrutiny’ Report of Session 2013-14 para 104 Available at: http://webcache.googleusercontent.com/search?q=cache:9rexvzJ9_pcJ:socialwelfare.bl.uk/subject-areas/government-issues/legislation/tso/160248139.pdf+&cd=1&hl=en&ct=clnk&gl=uk

⁷⁰ Ibid. paras 89 – 91.

⁷¹ Ibid. paras 186 – 187.

Article 13: Access to justice

The Northern Ireland Disability Strategy links Article 13 to Strategic Priority 17, to 'Ensure that disabled people are treated equally by the law, have access to justice and can live safely in their own community'⁷².

The Criminal Evidence (Northern Ireland) Order 1999 makes provision for the examination of a witness through an intermediary to assist vulnerable witnesses give their best possible evidence in criminal proceedings. The Justice Act (Northern Ireland) 2011 provides for the examination of a vulnerable defendant through an intermediary so that they can participate effectively in criminal proceedings. Whilst the 1999 Order has been in place for 15 years intermediaries are still not widely available throughout the justice system.⁷³

Issues to consider: What measures have been taken to ensure availability of intermediaries throughout the justice system in Northern Ireland?

Article 14: Liberty and security of person

The Northern Ireland Disability Strategy references Article 14 in respect of a commitment in the Programme for Government (PfG) to 'Tackle crime against older and vulnerable people by more effective and appropriate sentences and other measures'⁷⁴, thereby addressing the 'security' rather than the 'liberty' of the person aspect of the Article⁷⁵.

⁷² Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', pages 23-24. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>.

⁷³ Further information is available at: <http://www.dojni.gov.uk/registered-intermediary-schemes> (last visited 3 March 2014).

⁷⁴ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 44. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

⁷⁵ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – Draft Final Report 11 March 2014', page 94.

Disabled prisoners: monitoring and provision of support

In 2011 a root and branch review of the prison system in Northern Ireland reported that recording of disability amongst prisoners was poor. Whilst a survey of prisoners at HMP Maghaberry, Northern Ireland's largest prison holding in and around 1,700 inmates, found that 1 in 4 prisoners considered themselves to be disabled official records indicated only 18 prisoners having a disability⁷⁶.

Issues to consider: What arrangements are in place for the effective recording of prisoners with disabilities and what measures have been taken by the Northern Ireland Prison Service to ensure prisoners with disabilities are able to participate in prison life and to avail of rehabilitation services?

A significant number of prisoners in Northern Ireland suffer from mental health problems, 64% of sentenced male prisoners and 50% of sentenced female prisoners are personality disordered⁷⁷. Many prisoners suffer from pre-existing conditions which have influenced their offending behaviour and which are often exacerbated in the prison context. Reports have identified significant problems with respect to how the prison service supports prisoners with mental health problems⁷⁸. In October 2013 the National Preventative Mechanism, designated under the Optional Protocol to the Convention against Torture issued a report on an announced inspection of Ash House, Hydebank Wood Women's Prison⁷⁹. The NPM raised concerns regarding procedures in place to support prisoners at risk of suicide and

⁷⁶ Prison Review Team (October 2011): 'Review of the NI Prison Service: 'Conditions, management and oversight of all prisons', page 38. Available at: <http://www.dojni.gov.uk/index/ni-prison-service/nips-publications/independent-reports-reviews-nips/owers-review-of-the-northern-ireland-prison-service.htm>

⁷⁷ Office of the Deputy Prime Minister (July 2002): 'Reducing Re-offending by Ex- Prisoners. Report by the Social Exclusion Unit'. Available at: http://www.thelearningjourney.co.uk/file.2007-10-01.1714894439/file_view

⁷⁸ Criminal Justice Inspectorate NI (March 2010): 'Not a Marginal Issue Mental Health and the criminal justice system in Northern Ireland', (Belfast: CJINI). Available at: <http://www.cjini.org/CJINI/files/24/24d6cd45-20bb-4f81-9e34-81ea59594650.pdf>

Criminal Justice Inspectorate NI (March 2012): 'Not a Marginal Issue Mental Health and the criminal justice system in Northern Ireland – A follow-up inspection', (Belfast: CJINI). Available at: <http://www.dojni.gov.uk/index/ni-prison-service/nips-publications/nips-cjini-inspection-reports/nips-cjini-report-mental-health-and-the-criminal-justice-system-in-northern-ireland-a-follow-up-review.htm>

⁷⁹ NPM (17 December 2012): 'Report on an announced inspection of Maghaberry Prison 19-23 March 2012'.

self harm. The NPM recommended that procedures should be improved with an emphasis on individualized care plans, regular staff engagement, less use of observation cells and greater involvement in activity, including a peer support scheme and input from mental health workers⁸⁰.

The NPM raised specific concerns with respect to women prisoners and in particular recommended that women prisoners should no longer be co-located with male prisoners at Hydebank Wood⁸¹. The Minister for Justice in Northern Ireland has committed to the construction of a separate custodial facility for women prisoners in Northern Ireland⁸².

The forthcoming Mental Capacity Bill will make provision for a capacity-based approach to care, treatment and personal welfare in respect of persons subject to the criminal justice system, which is welcomed⁸³. The move to a capacity based approach must be accompanied with a culture change within the prison system, with the focus placed on supporting prisoners with mental health problems to attain and maintain maximum independence.

Issues to consider: What measures have been taken to improve procedures to support prisoners at risk of suicide in Northern Ireland and what mechanisms have been put in place to monitor their effectiveness? How will the requirements of the forthcoming Mental Capacity Bill be effectively applied in the Northern Ireland criminal justice system? What progress has been made on the development of a separate custodial facility for women prisoners in Northern Ireland?

⁸⁰ NPM (17 December 2012): Op. Cit.

⁸¹ Ibid.

⁸² Minister of Justice David Ford MLA Statement to the Assembly 'Northern Ireland Prison Service Estate Strategy' Tuesday 19th March 2013

⁸³ Department of Justice NI (October 2012): 'Consultation on proposals to extend Mental Capacity Legislation to the Criminal Justice System in Northern Ireland and implications for Mental Health powers', (Belfast: Department of Justice NI). Available at: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-paper-on-proposals-to-extend-mental-capacity-july-2012.pdf>

Deprivation of Liberty Safeguards (DOLS)

In England and Wales, Deprivation of Liberty Safeguards (DOLS)⁸⁴ have been introduced to protect people in hospitals or care homes who lack capacity to consent to their care or treatment, this provision does not apply in Northern Ireland.

Issues to consider: What measures have been taken to ensure that patients receiving treatment in psychiatric hospitals in Northern Ireland consent to both their stay and treatment?; what monitoring mechanisms that have been put in place?

Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment

Although the Northern Ireland Disability Strategy links Article 15 to a PfG commitment to 'Tackle crime against older and vulnerable people by more effective and appropriate sentences and other measures'⁸⁵, it is not clear how the obligations arising from the article have been considered with respect to these measures⁸⁶.

Treatment of disabled people in health and social care settings

In 2012 the NI Human Rights Commission (NIHRC) reported on its investigation of the human rights of older persons in nursing homes⁸⁷. Many older persons living in care homes have acquired disabilities. As a result of the investigation the NIHRC developed concerns regarding the quality of life, personal care, eating and drinking, the use of restraint, and medication and health care provision in nursing homes. On publication of the Report the Department of Health, Social Services and Public Safety

⁸⁴ Schedule A1 of the Mental Capacity Act 2005.

⁸⁵ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 44. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

⁸⁶ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – [Final Report 2014](#)', page 97.

⁸⁷ NI Human Rights Commission (2012): 'In Defence of Dignity: The Human Rights of Older People in Nursing Homes', (Belfast: NI Human Rights Commission). Available at: <http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf>

undertook to review the Nursing Homes Minimum Standards (2008). At the time of writing the review has not yet reported.

Issues to consider: What is the latest position regarding the review of Nursing Home Minimum Standards in Northern Ireland and how will the review will ensure compliance with UNCRPD Article 16?

The NIHRC report into nursing homes identified that in certain circumstances the excessive use of restraints, routinely used in care homes, can amount and indeed had amounted to individuals being treated in an inhuman and degrading manner⁸⁸. Instances of abuse had occurred as a result of the excessive application of restraints, both physical and chemical. The NIHRC identified that the absence of a statutory definition of restraint had contributed to a lack of coherent guidance on the acceptable use of restraint⁸⁹.

The NIHRC is aware that the aforementioned mental capacity legislation will make provision for a statutory definition of restraint where an individual is considered to lack capacity. The NIHRC considers that there is a need for broader awareness of the potential for the application of restraint in health and social care settings to impact adversely on the right to freedom from torture, or cruel, inhuman or degrading treatment.

In addition the Mental Capacity Bill will make provision for a new offence of ill treatment or wilful neglect of adults, who lack capacity, by persons with caring responsibilities. The NIHRC considers that to protect persons with a disability in the health and social care setting this offence should be of general application regardless of the capacity of the individual.

Issues to consider: What measures have been taken to ensure that the application of restraint in health and social care settings is only ever used in a manner consistent with Article 15 of the UNCRPD? What measures have been taken to effectively address abuses in health and social care settings throughout the Northern Ireland, including those being taken to ensure individuals or organisations

⁸⁸ NI Human Rights Commission (2012): Op.Cit.

⁸⁹ Ibid.

guilty of ill treatment or wilful neglect of persons with disabilities are brought to account?

Article 16: Freedom from exploitation, violence and abuse

The Northern Ireland Disability Strategy links Article 16 to a PfG commitment to 'reduce the level of serious crime'⁹⁰ but does not clearly relate this to addressing the experiences of disabled people.

Disability-related hate crime

In 2011/12 there were 33 incidents of disability hate crime reported to the PSNI. Whilst this figure suggests that incidents of disability hate crime are a relatively rare, the charity MENCAP report that 9 in 10 persons with a learning disability have experienced a hate crime incident or bullying⁹¹. This suggests that there is significant under reporting of disability related hate crimes.

Issues to consider: What assessment has been undertaken regarding the reasons for the apparent low reporting of disability hate crimes in Northern Ireland and what measures have been taken to address this?

Domestic and sexual violence

IMNI notes that a draft NI Strategy on domestic and sexual violence and abuse⁹², currently being consulted upon does not make provision for disability specific programmes.

Issues to consider: What assessment has been undertaken on the extent to which the NI response to domestic and sexual violence makes provision to assist victims with a disability in Northern Ireland?

⁹⁰Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 42. Available at: <http://www.ofmdfmni.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>.

⁹¹ Stand By Me Campaign. See <http://www.mencap.org.uk/campaigns/take-action/stand-me>

⁹² Department of Health, Social Services and Public Safety (2014): Stopping Domestic and Sexual Violence and Abuse in Northern Ireland 2013-2020. Available at: <http://www.dhsspsni.gov.uk/showconsultations?txtid=65665>

Article 19: Living independently and being included in the community

The Northern Ireland Disability Strategy links Article 19 to Strategic Priority 8 to ‘Increase the level of choice, control and freedom that people with disabilities have in their daily lives’⁹³, but does not provide any clarity as to how this will be achieved⁹⁴.

People with learning disabilities in residential care settings

Whilst the Department of Health, Social Services and Public Safety has made a commitment to ensure that “by 2015, anyone with a learning disability is promptly and suitably treated in the community and no one remains unnecessarily in hospital”⁹⁵. The Regulation and Quality Improvement Authority (RQIA), the body responsible for the reviewing health and social care provision in Northern Ireland, has raised concerns regarding the availability and accessibility of services for individuals with a learning disability living in the community⁹⁶.

People with learning disabilities in long-stay hospitals in Northern Ireland have experienced lengthy delays regarding resettlement in the community due to lack of resources⁹⁷.

⁹³ Office of the First Minister and the deputy First Minister (2013): ‘A Strategy to improve the lives of disabled people 2012-2015’, page 18. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

⁹⁴ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): ‘Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – [Final Report 2014](#)’, page 106.

⁹⁵ Department of Health, Social Services and Public Safety (2011): ‘Transforming Your Care (A Review of Health and Social Care in Northern Ireland)’, (Belfast: DHSSPS). Available at: <http://www.transformingyourcare.hscni.net/consultation/>

⁹⁶ Regulation and Quality Improvement Authority (2013): ‘A Baseline Assessment and Review of Community Services for Adults with a Learning Disability’, page 13. Available at: http://www.rqia.org.uk/cms_resources/Community%20Services%20for%20Adults%20with%20a%20Learning%20Disability.pdf

⁹⁷ Department of Health, Social Services and Public Safety (2012): ‘Delivering the Bamford Vision: The Response of the Northern Ireland Executive to the Bamford Review of Mental Health and Learning Disability Action Plan 2012-2015’, paragraph 6.6, page 25 (Belfast: DHSSPS). The Plan has committed £6.4 million to the resettlement by 2015 of approximately 200 long stay patients in learning disability hospitals that do not require treatment. Targets previously set to complete resettlement by 2002 and 2013 were missed due to a lack of resources’.

Issues to consider: What measures have been taken to ensure that persons with a learning disability in Northern Ireland are able to live inclusively in the community?; How have the concerns raised by the RQIA been addressed?

The Department of Health, Social Services and Public Safety (DHSSPS) is in the process of implementing a policy of rationalisation of state run nursing homes in Northern Ireland, which will result in a significant number of closures⁹⁸. A number of Health and Social Care Trusts announced in 2013 the closure of care homes within their respective areas, having had little or no consultation with persons living in or impacted by the proposed closures⁹⁹. This resulted in significant distress amongst residents, many of whom were elderly people with acquired disabilities¹⁰⁰. The NIHRC, inter alia, raised concerns and the Minister for DHSSPS undertook to coordinate a regional approach to closures which will ensure greater consultation¹⁰¹.

Issues to consider: What measures have been taken to ensure that persons with disabilities in Northern Ireland, including elderly persons with acquired disabilities, have access to a range of in-home, residential and other community support services?

Transport barriers

Problems with transportation have been identified as a persistent issue limiting disabled people's ability to live independently (and are also relevant to Article 20). Barriers include the unaccommodating hours of the door-to-door transport service, the lack of physical access to public transport, prohibitive costs of private transport (particularly taxis and mini buses) and

⁹⁸ Department of Health, Social Services and Public Safety (2013): 'Who Cares? The Future of Adult Care and Support in Northern Ireland – Consultation'. Available at: <http://www.dhsspsni.gov.uk/who-cares-future-adult-care-support-ni-discussion.pdf>

⁹⁹ BBC News (26 April 2013): 'Southern trust to shut all its NHS residential care homes'. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-22308193>

¹⁰⁰ NI Human Rights Commission (3 May 2013): Press Release 'Commission Voices Concern For Residents Of Care Homes'. Available at: <http://www.nihrc.org/index.php/news/item/706-commission-voices-concern-for-residents-of-care-homes>

¹⁰¹ Official Report (Hansard) Tuesday 7 May 2013 Volume 84, No 7 Ministerial Statement: Residential Care for Older People, pages 1 -2.

the lack of understanding and awareness of disability by many people who work for transport companies¹⁰².

Issues to consider: What measures have been taken to address access to transportation for people with disabilities in Northern Ireland?; and what is the assessment of the effectiveness of these measures?

Article 20: Personal Mobility

The Northern Ireland Disability Strategy links Article 20 to Strategic Priority 6, 'To eliminate barriers to accessing transport and ensure personal mobility for disabled people'¹⁰³ but although identifying a range of PfG-related commitments does not explicitly explain how these will realise the obligations emanating from the article.

Access to public transport

Although Part V of the Disability Discrimination Act 1995 has led to a number of significant achievements¹⁰⁴, some problems remain.

The Northern Ireland Survey of Activity Limitation and Disability (NISALD survey) identified that 83% of respondents said they rarely or never use public transport and of those that do, 16% said they had experienced difficulties in the 12 months prior to being interviewed thus suggesting that

¹⁰² Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – [Final Report 2014](#)', pages 109 and 112.

¹⁰³ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 17. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁰⁴ Part V of the Act incorporated, inter alia, a range of measures to address discrimination by transport providers including those concerned with rail vehicles, public service vehicles, taxis and other private hire vehicles which have positively changed policies and practices in the area of transport, notably in relation to air travel, taxis and transport operators. Other changes have included the expansion of concessionary fares to more groups of disabled people; an increase of accessible buses and trains; the installation of audio/visual announcement systems on all new trains and the expansion of a door-to-door bus service in urban areas; and the Baywatch campaign to highlight the abuse of designated parking spaces for disabled people.

there additional factors need to be considered to attain a completely accessible transport system¹⁰⁵.

Research by the Consumer Council in 2009 suggested that disability awareness staff training and verbal and electronic updates at stations are required in Northern Ireland¹⁰⁶.

The report of the Promoting Social Inclusion Working Group on Disability summarised the difficulties in relation to mobility in Northern Ireland when it commented that some of the difficulties involved in the mobility of disabled people were due to a range of factors including: the attitudes of people and society, service design, and the availability of accessible information¹⁰⁷.

The report suggested that the mainstreaming of disability considerations into planning and design can achieve positive outcomes for disabled people through supporting them to empower themselves to live more independent, participative lives.

Although the NI Executive's Disability Strategy¹⁰⁸ has identified a work stream on transport, it should be noted that resources have not been unequivocally allocated to this or any of the other six disability specific work streams in the strategy¹⁰⁹.

¹⁰⁵ Northern Ireland Statistics and Research Agency (2007): 'Disability and Activity Limitations amongst adults and children living in private households in Northern Ireland' (Belfast: NISRA). Available at: <http://www.csu.nisra.gov.uk/NISALD%20Household%20Prevalence%20Report.pdf>

¹⁰⁶ Consumer Council (2009): 'Public Transport on the Right Track?', (Belfast: Consumer Council). Available at: http://www.consumercouncil.org.uk/filestore/documents/Final_PT_report_05.06.09.pdf Issues identified from the research included, drivers not recognising disabilities such as blindness and not offering the appropriate help to blind people when buying tickets; drivers not stopping for people who are blind or have other disabilities; no enforcement of priority seats for the elderly and disabled; and staff not trained in the operation of equipment meant to make buses more accessible.

¹⁰⁷ Promoting Social Inclusion Working Group on Disability (2000): 'Report of the Promoting Social Inclusion Working Group on Disability', pages 90-93. Available at: http://www.ofmdfmi.gov.uk/report_of_the_promoting_social_inclusion_working_group_on_disability_pdf_1.38mb_.pdf

¹⁰⁸ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015' (Belfast OFMdFM), pages 27-28. Available at: <http://www.ofmdfmi.gov.uk/disability-strategy-2012-2015-revised-010313.pdf>

¹⁰⁹ Lead Departments will be required to engage in a tendering process to bid for resources to be allocated to the work stream for which they are responsible. Departmental bids to the commitments in the

Issues to consider: What further steps will be taken to ensure increased personal mobility for disabled people in Northern Ireland?

Article 21 Freedom of Expression

The Northern Ireland Disability Strategy links Article 21 with Strategic Priority 7 'To increase the level of accessible/inclusive communications so that people with disabilities can access information as independently as possible and make informed choices'¹¹⁰. The PfG commitment to 'improve online access to government services', including the promotion of digital inclusion for people with disabilities, is identified in connection with the Strategy¹¹¹.

Accessible information

Through its engagement with disabled persons IMNI has noted that the lack of information in appropriate formats continues to impact on persons with disabilities ability to access educational and health services. In addition there remains a shortage of qualified BSL and ISL Sign Language interpreters in Northern Ireland¹¹².

Issues to consider: What measures have been taken in Northern Ireland to ensure the effective provision of information in appropriate formats?

Delivering Social Change Fund for any of the 7 disability work streams will be set against other Programme for Government priorities and concerned with social disadvantage, poverty and inequality as set out in Annex 1 accompanying the Strategy.

¹¹⁰ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 17-18. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹¹¹ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015' (Belfast OFMDFM), page 17. Available at: <http://www.ofmdfmi.gov.uk/disability-strategy-2012-2015-revised-010313.pdf>

¹¹² 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', paragraph 5.2.4.1, page 174 (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

Article 22 Respect for Privacy

The Northern Ireland Disability Strategy does not refer to Article 22.

Mixed gender wards

In 2009 the Chief Nursing Officer in Northern Ireland issued a guidance letter to health and social care providers stating: *“Mixed gender accommodation has been identified by patients and relatives/carers as having a significant impact on maintaining privacy and dignity whilst in hospital. There should be a presumption therefore that men and women will not be required to sleep in the same area, nor use mixed bathing and WC facilities”*¹¹³. In August 2012 the Regulation and Quality Improvement Authority (RQIA), following a Review of Mixed Gender Accommodation in Hospitals, recommended that: *“The [Government] should ensure that robust policy on the support for privacy, dignity and respect for patients in mixed gender accommodation in hospitals is fully implemented”*¹¹⁴.

In an investigation by the Northern Ireland Human Rights Commission (NIHRC) into nursing homes a number of individuals with family members resident in such homes raised concerns regarding the absence of mechanisms to ensure the privacy of intimate care needs¹¹⁵.

Issues to consider: What measures have been taken to ensure disabled residents in health and social care settings in Northern Ireland are ensured privacy when receiving help with their personal

¹¹⁴ Privacy and Dignity-Mixed sex inpatient accommodation in hospitals, from the Chief Nursing Officer, Professor Martin Bradley, 21 May 2009 (DHSSPS), cited in: The Regulation and Quality Improvement Authority (2012): ‘Review of Mixed Gender Accommodation in Hospitals, Northern Health and Social Care Trust’ page 2. Available at:

http://webcache.googleusercontent.com/search?q=cache:ZZ46HgaVoucJ:www.rqia.org.uk/cms_resource/s/MixedGender_NHSCT_Rpt_Finalwebv%25207%2520Aug%252012.pdf+&cd=1&hl=en&ct=clnk&gl=uk

¹¹⁴ The Regulation and Quality Improvement Authority (2012): ‘[Review of Mixed Gender Accommodation in Hospitals Overview Report](#)’, page 23.

¹¹⁵ Northern Ireland Human Rights Commission (2012): ‘In Defence of Dignity, the Human Rights of Older People in Nursing Homes’, pages 39-40. Available at: <http://www.nihrc.org/documents/research-and-investigations/older-people/in-defence-of-dignity-investigation-report-March-2012.pdf>

care and, as far as practicable, have their choices respected in relation to the gender of staff helping with intimate personal care?

Article 23 Respect for home and the family

Support for carers

The Northern Ireland Disability Strategy links Article 23 to Strategic Priority 10 'To ensure parents and carers with a disability have access to effective and appropriate support, where required, to access their right to a family life'¹¹⁶ but although identifying a range of PfG-related commitments does not explicitly explain how these will realise the obligations emanating from the article.

In 2014 the NI Human Rights Commission researched the experience of carers in Northern Ireland¹¹⁷. The research identified that family members are often principal carers for persons with disabilities. The research also identified that there are many carers in Northern Ireland who are of advanced years but yet are still providing a significant amount caring to their loved ones on a full time basis. Such carers can experience difficulties in; paying for household bills; undertaking educational and employment opportunities and maintaining good mental and physical health.

The Evaluation of the 2009-2011 Bamford Action Plan found that more could be done with respect to Direct Payments, engagement with General Practitioners (GPs to ensure that the needs of carers are met, and involvement of carers in service planning). The Evaluation also referred to an awareness of the restrictions of respite allocation due to both high demand and a lack of resources¹¹⁸.

¹¹⁶ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 20. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹¹⁷ NIHRC research to be published.

¹¹⁸ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD' – [Final Report 2014](#), pages 120-121.

Issues to consider: What measures have and will be taken to ensure support for to carers of persons with disabilities in Northern Ireland, including financial support to compensate for costs associated with caring and the provision of respite care to ensure that carers are able to access education, employment and health services?

Article 24: Education

Although the Northern Ireland Disability Strategy links Article 24 with Strategic Priority 16, to ‘increase the opportunities for people with disabilities to attain skills and qualifications through access to appropriate training and lifelong learning opportunities’¹¹⁹, it does not explicitly address inclusive education or contain any specific action points related to the article¹²⁰.

Educational outcomes

In terms of disabled students’ attainment levels, there is an extremely limited amount of data available on educational outcomes for people with disabilities in Northern Ireland. Overall, 41% of disabled people had no qualifications, more than twice the proportion of non-disabled people (17%). People with a disability are less qualified than those without; for example, 13% of disabled people held higher qualifications compared with 27% of non-disabled people¹²¹.

The law concerning the education for children with disabilities in Northern Ireland is contained in the Education (Northern Ireland) Order 1996 as amended by the Special Educational Needs and Disability (Northern

¹¹⁹ Office of the First Minister and the deputy First Minister (2013): ‘A Strategy to improve the lives of disabled people 2012-2015’, page 23. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹²⁰ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): ‘Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD’ – [Final Report 2014](#)’, pages 123.

¹²¹ Equality Commission for Northern Ireland (2007): ‘Statement of Key Inequalities in Northern Ireland’, page 6 (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/Publications/Delivering-Equality/Statement-on-key-inequalities-in-N-Ireland?ID=1236>

Ireland) Order 2005 (SENDO)¹²². Schools, Education and Library Boards and Health and Social Services authorities must consider the advice given in the Department of Education's Code of Practice on the Identification and Assessment of Special Educational Needs¹²³ when deciding what they should do for children with special educational needs. Inadequate numbers of educational psychologists coupled with a lack of statutory time limits in relation to the school based stages of the assessment process has resulted in unacceptable waiting lists regionally.

Reports by the Education and Training Inspectorate (ETI) have highlighted a lack of consistency in procedures/protocols for assessing need and differential thresholds for intervention in relation to the assessment and diagnosis of SEN in Northern Ireland¹²⁴. A 2007 ETI report noted particular difficulties with delay and shortcomings in the planning for and assessment of children's special educational needs in all types of pre-school provision¹²⁵.

¹²² The statutory responsibility for securing provision for pupils with special educational needs rests with the Education and Library Boards and Boards of Governors of mainstream schools. Currently, special educational needs provision is matched to individual need and may be made in special schools; special units attached to mainstream schools; or in mainstream classes.

¹²³ Department of Education (1998): 'Code of Practice on the Identification and Assessment of Special Educational Needs', (Bangor: Department of Education). (Bangor: Department of Education). Available at: http://www.deni.gov.uk/the_code_of_practice.pdf The Code of Practice defines 'special education provision' as "educational provision which is additional to, or otherwise different from, the educational provision made generally to children of this age in ordinary schools." It is important to note that not all disabled children have special educational needs and not all children with special educational needs will have a disability raising the issue that not all children with disabilities may necessarily be protected by existing policies and programmes.

See also: Department of Education (2005): 'Supplement to the Code of Practice on the Identification and Assessment of Special Educational Needs' (Bangor: Department of Education). Available at: <http://www.deni.gov.uk/supplement.pdf>

¹²⁴ Education and Training Inspectorate (2006): 'Report of a Survey on Provision and Outcomes for Pupils with Special Educational Needs in Post-Primary Schools' (Bangor: Department of Education). Available at: <http://www.etini.gov.uk/survey-on-provision-and-outcomes-for-pupils-with-special-educational-needs-in-post-primary-schools.pdf>

¹²⁵ Education and Training Inspectorate (2007): 'Special Educational Needs in the Pre-School Sector' (Bangor: Department of Education). Available at: <http://www.etini.gov.uk/index/surveys-evaluations/surveys-evaluations-pre-school-centre-and-nursery-school/surveys-evaluations-pre-school-centre-and-nursery-school-2007/special-education-needs-in-the-pre-school-sector.pdf>

The Department of Education's (DENI) policy proposals for the 'Way Forward for Special Educational Needs and Inclusion'¹²⁶ proposed a new framework which has emerged following a review of the current system¹²⁷. In 2012, the Education Minister outlined his key preferred proposals¹²⁸ which were agreed by the Northern Ireland Executive. Among the proposed changes is the replacement of statements of special educational needs with Coordinated Support Plans (CSPs) which would be awarded to 'some children in mainstream classrooms, all children in learning support centres attached to mainstream schools and all children in special schools'. Concerns have been expressed¹²⁹ that the existing policy proposals will dilute existing entitlements for children and young people with disabilities and lead to inconsistencies between children and young people with disabilities depending on whether they are educated in special school or mainstream schools, and whether they receive a CSP or a Person Learning Plan¹³⁰.

¹²⁶ A consultation on the policy proposals concluded on 31 January 2010. However, concerns were expressed that the proposals would lead to greater uncertainty, reduce further the confidence of parents, fail to effectively address the shortcomings of the current system and erode the existing entitlement of children with disabilities to special educational needs provision (see Harper et al (2012): Op Cit. at pages 193-194)

¹²⁷ 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', pages 193-194 (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

¹²⁸ Department of Education (2012) 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, Bangor: DENI

See also Department of Education (2009): 'Every School a Good School: The Way Forward for Special Educational Needs', Bangor: DENI. On 16th May 2012, the Minister presented a policy paper to the Education Committee. See also Committee for Education, Special Educational Needs and Inclusion, Official Report (Hansard) Northern Ireland Assembly, 18 January 2012.

¹²⁹ These include:

- Concern that the Personal Learning Plan (PLP) proposals will not meet the needs of children in a timely manner, consistent across all schools;
- Concern of risk to principle of inclusion;
- Concern regarding the appeal pathways for children with PLPs;
- Disappointment that further progress has not been made to facilitate the child's right to appeal to the Special Educational Needs and Disability Tribunal (SENDIST);
- Concern at the lack of meaningful involvement of children and young people in the development of the policy proposals.

¹³⁰ See NICCY Submission to the NI Assembly Committee for Education: 25 May 2012 http://www.niccy.org/uploaded_docs/2012/Consultations/Apr-

Concern continues to be expressed at the quality of educational experiences received by children with disabilities in Northern Ireland. In particular, there are concerns at the lack of resourcing, planning, training, participation and support¹³¹. There are no specific programmes in place which encourage people with disabilities to train as teachers¹³².

The Equality Commission for Northern Ireland (ECNI) has recommended a number of legislative reforms to improve the rights of disabled pupils¹³³.

Issues to consider: What further measures will the Executive take to:-

- (i) collect, monitor and review information (including on attainment levels) regarding pupils and students with a disability in Northern Ireland;**
- (ii) put in place consistent procedures/protocols for assessing need and differential thresholds for intervention in relation to the assessment and diagnosis of SEN in Northern Ireland;**
- (iii) ensure the quality of educational experiences received by children with disabilities in Northern Ireland with regard to resourcing, planning, training, participation and support; and**

[July/NICCY%20submission%20to%20Education%20Committee%20re%20DE%20policy%20proposals%20on%20SEN%2025%205%2012%20FINAL.pdf](#) Accessed 31 January 2014;

Children with Disabilities Strategic Alliance (2014) The State of SEN statements: the case for specification and quantification, Belfast: CDSA

¹³¹ This has resulted in pupils with disabilities being placed in mainstream education settings that are ill prepared to meet their needs.

¹³² 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', pages 192-193, (Belfast: Equality Commission NI).

<http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

¹³³ Equality Commission for Northern Ireland (March 2012): 'Strengthening Protection for Disabled People Proposals for Reform - Full Report', (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Research-investigations>

These include a free standing right for disabled people against harassment related to their disability by schools when providing education for disabled pupils in line with protections existing under Northern Ireland equality law on other equality grounds and in Great Britain under the Equality Act 2010. The Commission also recommends that an additional duty is placed on schools to provide auxiliary aids and services for disabled pupils, where reasonable; in circumstances where a failure to do would put the disabled pupil at a substantial disadvantage compared to non-disabled pupils.

- (iv) **secure equality of opportunity for pupils and students with disabilities in Northern Ireland, including the immediate realisation of reasonable accommodation;**
- (v) **set targets to increase participation and completion rates by students with disabilities in all levels of education and training in Northern Ireland, including tertiary level education.**

Transitions from school

Research has suggested that the process of transition from school to further education, training or employment and from child to adult health and social care services is often inadequate¹³⁴.

Issues to consider: What measures will the Executive take to improve the process of transition for disabled children and young people from school to further education and employment?

Article 25: Health

The Northern Ireland Disability Strategy only addresses health in relation to mental health, the need for joint working between health, social care and housing agencies and how access to sports and leisure improves health¹³⁵.

Health Service reform

The Department of Health, Social Services and Public Safety (DHSSPS)¹³⁶ is currently taking forward, as part of the Programme for Government¹³⁷ a

¹³⁴ Regulation Quality and Improvement Authority (2013): 'A Baseline Assessment and Review of Community Services for Adults with a Learning Disability', page 36 (Belfast: RQIA). Available at: http://www.rqia.org.uk/publications/rqia_reviews.cfm

Lundy, L., Byrne, B. and McKeown, P. (2012) 'Review of Transitions to Adult Services for Young People with Learning Disabilities', page 34, para 2 (Belfast: NICCY). Available at: <http://www.niccy.org/Publications/PolicyandResearchReportsandpapers/publications-from-2012>

¹³⁵ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD' – [Final Report 2014](#), pages 130.

¹³⁶The Department of Health, Social Services and Public Safety (DHSSPS) has a statutory responsibility under the Health and Social Care (Reform) Act (Northern Ireland) 2009 to promote an integrated system of health and social care (HSC). The Department's current objectives are designed, inter alia, to secure improvement in: the physical and mental health of people in Northern Ireland; the prevention, diagnosis and treatment of illness; and the social wellbeing of the people in Northern Ireland

commitment to allocate an increasing percentage of the overall health budget to public health¹³⁸, major proposals for reforming, reconfiguring and modernising health and social care through ‘Transforming Your Care’¹³⁹ and a new public health strategy, ‘Fit and Well – Changing Lives’¹⁴⁰, based on a whole system planning approach which also targets the reduction of health inequalities. In addition, a number of Disability-specific policies and initiatives have been developed¹⁴¹.

Issues to consider: What actions will be taken to monitor the impact in Northern Ireland of National Health Service reform on persons with disabilities?

Adequacy of mental health care

Mental illness has been identified as one of the major causes of ill health and disability in Northern Ireland with twenty five per cent (25%) higher overall prevalence of mental health problems than in England¹⁴².

A Health Survey for Northern Ireland 2010/11 highlighted that one in five respondents showed signs of a possible mental health problem and that

See: Department of Health, Social Services and Public Safety for Northern Ireland (2012): ‘Departmental Business plan 2011-15 - revised milestones for 2013/14 focal year’. Available at:

<http://www.dhsspsni.gov.uk/business-plan-milestones-2013-14.pdf>

¹³⁷ Northern Ireland Executive (2012): ‘Programme for Government 2011-15: Building a Better Future’, page 52. Available at: <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>

¹³⁸ Northern Ireland Executive (2012): ‘Programme for Government 2011-15: Building a Better Future’, page 35. Available at: <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>

¹³⁹ The Department seeks to secure a shift from hospital based services to community based services together with an appropriate shift in funding. For further information see:

<http://www.transformingyourcare.hscni.net/wp-content/uploads/2013/03/Transforming-Your-Care-Vision-to-Action-Post-Consultation-Report.pdf>

¹⁴⁰ Department of Health, Social Services and Public Safety for Northern Ireland (2012): ‘Fit and Well – Changing Lives – A Ten Year Public Health Strategic Framework for Northern Ireland 2012-2022. A Consultation Document’, (Belfast: DHSSPS). The framework includes a commitment to reducing the health inequalities experienced by vulnerable people in Northern Ireland, including people with disabilities. Available at: <http://www.dhsspsni.gov.uk/fit-and-well-consultation-document.pdf>

¹⁴¹ These include: the Bamford Review of Mental Health and Learning Disability; Mental Capacity (Health, Welfare and Finance) legislation; the Autism Strategy; the Physical and Sensory Disability Strategy; Protect Life – A Shared Vision: Suicide Prevention Policy; and the Speech, Language and Communication Therapy Action Plan: Improving Services for Children and Young People.

¹⁴² Gray, A.M. and Horgan, G. (2009): ‘Figuring It Out - Looking Behind the Social Statistics in Northern Ireland’, page 27, (Economic and Social Research Council, University of Ulster and Queens University Belfast). Available at: <http://www.ark.ac.uk/publications/books/Figuringitout.pdf>

women were more likely to show signs of such a problem (23%) than men (17%)¹⁴³.

The strategy for addressing mental health issues in Northern Ireland ended in 2008 and has not been replaced by a new or revised strategy.

It is acknowledged by the DHSSPS that people with poor physical health are at a higher risk of experiencing common mental health problems and people with mental health problems, especially those with severe and enduring mental illness, are more likely to have poor physical health¹⁴⁴.

Issues to consider: What actions it will take to reduce levels of mental ill-health in Northern Ireland?

Health inequalities

People with learning disabilities are more likely to experience major illnesses and are 58 times more likely to die prematurely but that even with such a dramatic health profile they are less likely to get some of the

¹⁴³ Department of Health, Social Services and Public Safety for Northern Ireland (2012): 'Fit and Well – Changing Lives. A Ten Year Strategic Public Health Framework for Northern Ireland', pages 35-36, (Belfast: DHSSPS). Available at: <http://www.dhsspsni.gov.uk/fit-and-well-consultation-document.pdf>

In respect to differences with age and gender, these were reported in the 16-24 and 35-44 age-groups. Overall, sixteen per cent (16%) of respondents in the youngest age-group (16-24 years) scored highly, around one in ten men (9%) compared with around one in five women (21%). Almost a quarter of respondents (23%) in the 35-44 age group scored highly, with eighteen per cent (18%) of men compared with twenty seven per cent (27%) of women.

¹⁴⁴ People with mental health disabilities have higher rates of ischemic heart disease, stroke, high blood pressure and diabetes among people with schizophrenia or bipolar disorder compared to the rest of the population. People with schizophrenia are 90% more likely to get bowel cancer and 42% more likely to get breast cancer (women only). 31% of people with schizophrenia and chronic heart disease (CHD) are diagnosed under 55, compared to 18% of others with CHD; these figures are 41% and 30% respectively for diabetes. After five years, 28% of people who have had a stroke and have schizophrenia have died, as have 19% of people with bipolar disorder, compared with 12% of people with no serious mental health problems. People with learning difficulties have higher rates of respiratory disease at nearly twenty per cent (19.8%) than at fifteen per cent (15.5%) for the remaining population. People with learning disabilities are more likely to be obese. The rate of obesity in all those with their body mass index (BMI) recorded was 28.3 per cent in people with a learning disability, as compared to 20.4 per cent for the remaining population. (Source: 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', pages 203-204 (Belfast: Equality Commission NI)). Available at: <http://www.equalityni.org/Publications?subject=Disability&type=All&year=2012&page=2>

evidence-based screening, checks and treatments they need, and continue to face real barriers in accessing services¹⁴⁵.

There is no evidence that these differences have been ameliorated to any extent. The results of the 'Confidential Inquiry into premature deaths of people with a learning disability'¹⁴⁶ underlines the striking extent to which this aspect of the right to health is being violated¹⁴⁷.

An investigation by the Equality Commission for Northern Ireland found that people with learning disabilities face serious challenges such as poor communication from healthcare staff, a lack of understanding of their health needs, and a lack of user friendly written information in accessible formats¹⁴⁸.

Issues to consider: What actions will be taken to improve health outcomes for persons with learning disabilities in Northern Ireland?

Article 26: Habilitation and rehabilitation

The Northern Ireland Disability Strategy links Article 26 to PfG commitments to deliver more social and affordable homes, programmes to address chronic condition management and obesity and increase access to and outcomes from new treatments and services¹⁴⁹. However, the Strategy

¹⁴⁵ Department of Health, Social Services and Public Safety for Northern Ireland (2012): Op. Cit., page 48. See also: Black, Dr. L.A. (2013): 'Health inequalities and people with a learning disability' NIAR 769-2013 (Belfast: Northern Ireland Assembly Research and Information Services). Available at: <http://www.niassembly.gov.uk/Documents/RaSe/Publications/2013/health/13413.pdf>

¹⁴⁶ Michael, J. (2008): 'Healthcare for all: Report of the Independent Inquiry into access to healthcare for people with learning disabilities'. Available at: http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_106126.pdf

See also the Briefing Paper by Mencap on the Confidential Inquiry which is available at: http://www.mencap.org.uk/sites/default/files/documents/Briefing_Confidential_Inquiry.pdf

¹⁴⁷ Although, carried out in England, there is no reason to believe that the situation in Northern Ireland is any better.

¹⁴⁸ Equality Commission for Northern Ireland (2008): 'Section 75 Formal Investigation into the Accessibility of Health Information for People with a Learning Disability 2006-2008', (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/Delivering-Equality/Investigations.aspx>

¹⁴⁹ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', pages 35, 40, 41 and 53. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

is not clear about how these actions will be measured and evaluated with respect to fulfilling the obligations arising from Article 26.

Joined-up approaches to habilitation and re-habilitation

In 2012, the DHSSPS published 'Living with Long-term Conditions: A Policy Framework'¹⁵⁰ in line with a commitment in the Northern Ireland Executive's Programme for Government¹⁵¹.

Whilst the scope of 'Living with Long-term Conditions' extends to the overall health and well being of individuals, including their emotional health and well being, the strategic framework does not extend beyond the jurisdictions of health and social care to the area of vocational (education and employment) rehabilitation.

Whilst the framework states that health and social care organisations should work closely with other Government departments, agencies and organisations, in areas such as benefits, housing and employment to enhance the delivery of integrated services, it is unable to ensure the delivery of integrated services.

Issues to consider: What measures will be taken to require health and social care organisations to work closely with other public authorities to organise, strengthen and extend comprehensive habilitation and rehabilitation programmes and services, particularly in the areas of health, employment, education and social services?

Article 27: Work and Employment

The Northern Ireland Disability Strategy links Articles 27 (together with Article 24) to Strategic Priority 15, 'Work towards increasing the number of people with disabilities entering all levels of employment and safeguard the

¹⁵⁰ Department of Health, Social Services and Public Safety for Northern Ireland (2012): 'Living with Long-term Conditions: A Policy Framework', (Belfast: DHSSPS). Available at: <http://www.dhsspsni.gov.uk/long-term-condition.htm>

¹⁵¹ Northern Ireland Executive (2012): 'Programme for Government 2011-15: Building a Better Future', page 41, refers to the enrolment of people who have a long-term (chronic) condition, and who want to be enrolled, in a dedicated chronic condition management programme. Available at: <http://www.northernireland.gov.uk/pfg-2011-2015-final-report.pdf>

rights of those disabled people already in work' and Strategic Priority 16, 'Increase opportunities for people with disabilities to attain skills and qualifications through access to appropriate training and lifelong learning opportunities'¹⁵². The Disability Strategy also relates a range of PfG commitments to Article 27¹⁵³. Some of these are clearly related to employment e.g. to 'develop and implement a strategy to reduce economic inactivity through skills, training, incentives and job creation'¹⁵⁴, and to 'support people (with an emphasis on young people) into employment by providing skills and training'¹⁵⁵. Other commitments are not clearly linked to employment e.g. 'reduce the level of serious crime (including hate crime)¹⁵⁶.

Employment gap

Person with disabilities make up 26% of the total figure of those classed as economically inactive in Northern Ireland¹⁵⁷. The employment rate for people without disabilities is nearly twice that of persons without disabilities (32%)¹⁵⁸, mirroring a similar ratio in relation to those without educational qualifications¹⁵⁹. According to a 2013 survey, most people claiming the main unemployment benefit, Job Seekers Allowance, had worked since

¹⁵² Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', pages 22-23. Available at: <http://www.ofmdfni.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁵³ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', pages 35 - 42. Available at: <http://www.ofmdfni.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁵⁴ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 35. Available at: <http://www.ofmdfni.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁵⁵ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 38. Available at: <http://www.ofmdfni.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁵⁶ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 42. Available at: <http://www.ofmdfni.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁵⁷ Northern Ireland Statistics and Research Agency (July 2012): 'Labour Market Statistics', (Belfast: NISRA). Available at: http://www.detini.gov.uk/lm_statistical_press_release_-_july_2012_final_.pdf

¹⁵⁸ Raeside, R., McQuaid, R., Canduela, J., Graham, H., Chen, T., Egdell, V. and Pearson, M. (March 2014): 'Employment Inequalities in Northern Ireland', page 178 (Employment Research Institute, Edinburgh Napier University).

¹⁵⁹ Equality Commission for Northern Ireland (2010): 'Inequalities in Education Fact and Trends 1998 – 2008', (Belfast Equality Commission NI). Research report highlights that a greater proportion of economically inactive people with a declared disability hold no qualifications (52%) than those without a declared disability (27%). Available at: <http://www.equalityni.org/Publications/Delivering-Equality/Inequalities-in-education-1998-2008-summary?ID=1238>

2010. This figure contrasts significantly with the experience of persons with disabilities which show just 12% of respondents with a disability had worked since 2010¹⁶⁰.

Welfare to work measures

While the Department for Employment and Learning provides a number of programmes to support persons with disabilities in Northern Ireland into employment such as Access to Work NI¹⁶¹, evidence provided to IMNI from the disability sector indicates that these programmes have not effectively supported people with more complex disabilities requiring a high level of personalised and ongoing support to access and retain employment and did not include accurate statistics and targets utilising appropriately disaggregated data to identify what progress has been made in this area¹⁶².

Although the Disability Strategy for Northern Ireland identifies working towards increasing the number of people with disabilities entering all levels of employment as a strategic priority¹⁶³, no specific actions to achieve this are set out.

Attitudinal barriers

A recent equality awareness survey in Northern Ireland found that 26% of respondents stated that they would mind having a person with mental ill health as a colleague¹⁶⁴.

¹⁶⁰ Department for Social Development (October 2013): 'Work and the welfare system: a survey of benefits (social security) and tax credits recipients in Northern Ireland', page 30, final paragraph, (Belfast: DSD). See also table 3.2 - length of time out of work by benefit type, age, disability and gender. Available at: http://www.dsdni.gov.uk/work_and_the_welfare_system_a_survey_of_benefits_and_tax_credits_recipients_in_northern_ireland.pdf

¹⁶¹ Access to Work offers practical assistance to people with disabilities to maintain employment such as special aids and equipment, travel to work costs, support workers etc. Further information available at: <http://www.nidirect.gov.uk/access-to-work-practical-help-at-work>

¹⁶² Equality Commission for Northern Ireland (2012): Notes of UNCRPD Work and Employment Workshop, 7 March 2012 (unpublished).

¹⁶³ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015', pages 22-23 (Belfast: OFMdFM). Available at: <http://www.ofmdfmi.gov.uk/disability-strategy-2012-2015-revised-010313.pdf>

¹⁶⁴ Equality Commission for Northern Ireland (2011): 'Do You Mean Me?', page ii. Available at: <http://www.doyoumeanme.org/teacher-guide/>

Issues to consider: What measures, including outcome focused actions, policies, laws and programmes¹⁶⁵ and the collection of appropriate disaggregated data, will be taken to:

- (i) assist persons with complex disabilities into employment in Northern Ireland; and**
- (ii) improve the overall employment situation of persons with disabilities in Northern Ireland?**

Article 28 – Adequate Standard of Living and Social Protection

The Northern Ireland Disability Strategy links Article 28 to Strategic Priority 13, to ‘Reduce poverty among people with disabilities and their families and protect their right to an adequate standard of living’ and Strategic Priority 14, to ‘Ensure that people with disabilities and their families have appropriate accommodation and adequate support to live independently’¹⁶⁶. A number of actions under the PfG are identified in association with these Priorities including, to ‘Introduce UNCRPD compliant measures to tackle poverty and social exclusion’¹⁶⁷ and to ‘Deliver 8,000 social and affordable homes that will include homes adapted to meet the needs of people with disabilities’¹⁶⁸. However, the Strategy does not identify how this range of actions will be monitored with respect to meeting obligations under Article 28.

¹⁶⁵ For example, education packages, job training, work experience, flexible working arrangements, etc.

¹⁶⁶ Office of the First Minister and the deputy First Minister (2013): ‘A Strategy to improve the lives of disabled people 2012-2015’, page 22. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁶⁷ Office of the First Minister and the deputy First Minister (2013): ‘A Strategy to improve the lives of disabled people 2012-2015’, page 37. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁶⁸ Office of the First Minister and the deputy First Minister (2013): ‘A Strategy to improve the lives of disabled people 2012-2015’, page 35. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

Welfare Reform

The Welfare Reform Bill due to be passed into law by the Northern Ireland Assembly¹⁶⁹ will bring about what are widely regarded as radical changes in the social security system¹⁷⁰. According to research the changes to disability benefits and the increased requirements on people with disabilities to look for work, as well as changes to Housing Benefit entitlement will impact far more on Northern Ireland than other parts of the UK¹⁷¹. There are a high proportion of people with disabilities living in Northern Ireland compared to other parts of the UK due, in part, to the legacy of conflict within the region. Just over 1 in 10 of the population in Northern Ireland is in receipt of Disability Living Allowance compared to just over 1 in 20 of the population in Great Britain¹⁷². Over 10% of the working age population in Northern Ireland is claiming Incapacity Benefit (IB) or Employment Support Allowance (ESA) compared to 6.6% in Great Britain (GB)¹⁷³.

A wide range of groups including academics, political parties, NGOs, churches, trade unions and equality and human rights bodies have expressed concerns about the potential negative impact of the reforms to social security benefits on people experiencing poverty, including disabled people¹⁷⁴.

¹⁶⁹ In Northern Ireland, Social Security is a devolved matter for the Northern Ireland Assembly and is currently at the consideration stage. The proposed welfare reform measures are broadly similar to the measures already passed into law in GB. For further information, see: <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Welfare-Reform-Bill/>

¹⁷⁰ Northern Ireland Assembly (2011): 'An introduction to Welfare Reform', Research and Library Service Briefing Paper, paper 13/11, NIAR 606-10. Available at: www.niassembly.gov.uk/researchandlibrary/2011/1311.pdf

¹⁷¹ Beatty, C. and Fothergill, S. (2013): 'The Impact of Welfare Reform in Northern Ireland' (Centre for Regional Economic and Social Research at Sheffield Hallam University for NI Council for Voluntary Action). Available at: http://www.nicva.org/sites/default/files/The%20Impact%20of%20Welfare%20Reform%20in%20NI_2013.pdf

¹⁷² Department for Social Development (April 2013): 'Welfare Reform Briefing Section 75 Update', page 55, final paragraph, (Belfast: DSD). Available at: www.dsdni.gov.uk/welfare-reform-bill-section-75-update-april-2013.doc

¹⁷³ MacInnes, T., Aldridge, H., Parekh, A. and Kenway, P. (2012): 'Monitoring Poverty and Social Inclusion in Northern Ireland', (York: Joseph Rowntree Foundation). Available at: http://www.jrf.org.uk/topic/monitoring_poverty

¹⁷⁴ See for example:

Transition from the Disability Living Allowance¹⁷⁵ (DLA) to the new Personal Independence Payment (PIP)

The proposed transition from the Disability Living Allowance¹⁷⁶ (DLA) to the new Personal Independence Payment (PIP) will result in loss of income for many disabled people¹⁷⁷. It is estimated that in Northern Ireland 57% of those in receipt of DLA will either lose their entitlement all together or have their disability benefit decreased¹⁷⁸. Those individuals adversely affected

Beatty, C. and Fothergill, S. (October 2013): 'The Impact of Welfare Reform on Northern Ireland', (Centre for Regional Economic and Social Research, Sheffield Hallam University for the Northern Ireland Council for Voluntary Action). Available at:

http://www.nicva.org/sites/default/files/The%20Impact%20of%20Welfare%20Reform%20in%20NI_2013.pdf

Northern Ireland Assembly Ad Hoc Committee (2013): 'Report on whether the Provisions of the Welfare Reform Bill are in Conformity with the Requirements for Equality and Observance of Human Rights'. Available at: <http://www.niassembly.gov.uk/Assembly-Business/Committees/Ad-Hoc-Committee-on-Conformity-with-Equality-Requirements-Welfare-Reform-Bill/Reports/Report-on-whether-the-Provisions-of-the-Welfare-Reform-Bill-are-in-Conformity-with-the-Requirements-for-Equality-and-Observance-of-Human-Rights/>

A summary of concerns expressed by Church Leaders and Trade Unions on Welfare Reform Bill and its potential impact on Northern Ireland is available at: <http://www.bbc.co.uk/news/uk-northern-ireland-20132024>

Law Centre Northern Ireland (September 2011): 'Evidence to the Work and Pensions Select Committee Proposal to Replace Disability Living Allowance with Personal Independence Payment'. Available at: <http://www.lawcentreni.org/Publications/Policy-Responses/ResponseWPSCreplacingDLA.pdf>

Northern Ireland Welfare Reform Group (October 2012): 'The Welfare Reform Bill: Briefing on the key issues for people with disabilities and carers'. Available at: <http://www.disabilityaction.org/fs/doc/publications/disability-and-carers-policy-briefing-on-welfare-reform.doc>

¹⁷⁵ Disability Living Allowance is a social security benefit specifically targeted at disabled adults and children to help them with extra costs associated with having a disability addressing care and support requirements of day to day living and mobility requirements. Persons with disabilities could apply for either or both the care component of mobility component of DLA. This allowance also provided a passport to other additional social security benefits such as increased unemployment benefit. This benefit has been replaced by the Personal Independence Payment directed at persons with disabilities.

¹⁷⁶ Disability Living Allowance is a social security benefit specifically targeted at disabled adults and children to help them with extra costs associated with having a disability addressing care and support requirements of day to day living and mobility requirements. Persons with disabilities could apply for either or both the care component of mobility component of DLA. This allowance also provided a passport to other additional social security benefits such as increased unemployment benefit. This benefit has been replaced, with revised criteria for eligibility, by the Personal Independence Payment.

¹⁷⁷ In Northern Ireland Social Security is a devolved matter for the Northern Ireland Assembly however similar legislation under consideration stage at the Northern Ireland Assembly will ensure parity of treatment of all disabled people across the UK. Available at: http://www.dsdni.gov.uk/index/publications/other_reports/equality.htm

¹⁷⁸ Department for Social Development (April 2013): 'Welfare Reform Briefing Section 75 Update', (Belfast: DSD). Available at: www.dsdni.gov.uk/welfare-reform-bill-section-75-update-april-2013.doc 25% of those Disability Living Allowance recipients who will be reassessed before October 2015 will not be eligible for Personal Independence Payment and will receive no award while 32% will have their award decreased and 24% are expected to see an increase in their payments. The remaining 19% are expected

by incapacity benefit reform are expected to lose an average of almost £3,500 per year¹⁷⁹.

The more stringent and frequent medical tests under PIP are based on a medical, rather than social, model of disability. Further concerns have been raised in relation to the lack of an arrears system under PIP. For example, those wrongly held on remand do not qualify for their claim to be backdated for the entire period of their wrongful custody¹⁸⁰.

Universal Credit

It has been suggested that as a result of the transition to Universal Credit, disabled adults and children will receive less financial support from the social security system. For example, under this reform severely disabled people who do not have another adult to assist them will receive £28 to £58 less per week in care support¹⁸¹.

Housing benefit

It is estimated that if the removal of the 'spare room subsidy' (also referred to as the 'bedroom tax')¹⁸² is introduced, it will affect 32,000 households in Northern Ireland. This measure has been criticised for failing to take into account that a spare room may be needed to accommodate equipment for a person with disabilities in the household. In 2013, the UN Special Rapporteur on Housing expressed deep concern at both the impact of the measure and stated that it could constitute a violation of the human right to housing¹⁸³.

Work Capability Assessment

to see no change. Beatty and Fothergill (see page 14 in reference 105 above) estimate that those losing out as a result of the changeover from DLA to PIP will lose an average of £2,000 per year.

¹⁷⁹ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – [Final Report 2014](#)', page 105.

¹⁸⁰ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – Draft Final Report 11 March 2014', page 105.

¹⁸¹ Ibid.

¹⁸² The removal of the 'subsidy' will reduce the amount of housing benefit paid to claimants living in social housing who are deemed to have surplus bedrooms - 14% for one bedroom and 25% for two or more. Source: Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – Draft Final Report 11 March 2014', page 145.

¹⁸³ Press Statement by the United Nations Special Rapporteur on adequate housing: End mission to the United Kingdom of Great Britain and Northern Ireland, 29 August to 11 September 2013. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13706&LangID=E>

The Work Capability Assessment measure, part of the welfare to work programme, is also likely to have an adverse impact on persons with disabilities¹⁸⁴. There is evidence that persons with disabilities are being deemed by the government as fit for work and having their disability benefits reduced or removed¹⁸⁵. Such circumstances arise at time when the Government's welfare to work measure intended to support disabled people and other long-term unemployed people into work has failed to deliver against the Government's own targets¹⁸⁶.

Issues to consider: What further measures will be undertaken in Northern Ireland to:-

- (i) ensure that persons with disabilities currently in receipt of welfare benefits have an adequate standard of living for themselves and their families;**
- (ii) monitor the impact of welfare reform on persons with disabilities;**
- (iii) mitigate adverse impacts on persons with disabilities arising from welfare reform;**
- (iv) increase the numbers of persons with disabilities entering work?**

¹⁸⁴ Department for Social Development (1 August 2012): News Release. 67% of Employment and Support Allowance appeals upheld in Department's favour. Therefore 33% of persons with disabilities in Northern Ireland have been wrongly assessed as fit for work and lost social security benefit. Available at: <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dsd/news-releases-dsd-august-2012/news-dsd-010812-esa-appeals-upheld.htm>

¹⁸⁵ Department for Social Development (1 August 2012): News Release. Available at: <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dsd/news-releases-dsd-august-2012>

¹⁸⁶ House of Commons Committee of Public Accounts (13 February 2013): 'Department for Work and Pensions: Work Programme Outcome Statistics, Thirty-third Report of Session 2012-2013, report together with formal minutes and written evidence, conclusions and recommendations'. The report highlights the shortcomings regarding measures to secure access to employment for many disabled people, see pages 3-6. Available at:

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/936/936.pdf>

See also research by Disabled Person's Organisation-Disability Rights UK (October 2013): 'Taking Control of Employment Support'. The Work Programme (welfare to work measure) in Great Britain, similar to the Steps to Work Programme due to be introduced in Northern Ireland, set a (modest) performance target: 16.5% of people on the out of work disability benefit Employment and Support Allowance should secure sustained employment through the programme. Government figures from July 2013 show only 5.3% of new Employment and Support Allowance claimants had secured employment (a 95% failure rate). The most optimistic projections suggest this might rise to 12% as the most recent recruits go the full course of the programme (a failure rate, at best, of 88%) - see paragraph 3.1, third bullet point, page 12. Available at: <http://www.disabilityalliance.org/policy-campaigns/reports-and-research/taking-control-employment-support>

Article 29: Participation in political and public life

The Northern Ireland Disability Strategy includes as Strategic Priority 1, a commitment to 'Increase people with disabilities' opportunity to influence policies and programmes in Government'¹⁸⁷. However, it is difficult to comprehend how the action associated with this priority, 'To invest in social enterprise growth to increase sustainability in the broad community sector'¹⁸⁸, will adequately realise the requirements of Article 29.

Representation in public and political life

With respect to participation in public and political life, the UK State Report contains no analysis of the participation of disabled persons in political life in Northern Ireland. However, persons with disabilities continue to be significantly under-represented on the boards of public bodies in Northern Ireland¹⁸⁹ and in political life¹⁹⁰.

Involvement of persons with disabilities in the development of policy

Independent evaluations¹⁹¹ commissioned by the Equality Commission concluded that public authorities needed to do more to effect meaningful engagement with disabled people in the development of policy. The

¹⁸⁷ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 15. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁸⁸ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 33. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁸⁹ Information on public appointments during the period 2011-12 indicates that less than 1% of those appointed were disabled (compared with 2% in the previous period). Source: Office of the First and deputy First Minister (2012): 'Public Appointments Annual Report 2011/12', page 16. Available at: <http://www.ofmdfmi.gov.uk/public-appointments-annual-report-2011-2012.pdf>

¹⁹⁰ Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – Draft Final Report 11 March 2014', page 150.

¹⁹¹ 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' (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pd>

Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in Northern Ireland relative to the Articles of the UNCRPD – [Final Report 2014](#)', page 151.

evaluation found that a majority of public authorities had not provided appropriate evidence of meeting any of the framework indicators relating to the recruitment of people with disabilities to public life positions within formal and informal decision-making structures.

Issues to consider: What further actions will be undertaken to recruit people with disabilities to public life positions and to effect the meaningful participation of disabled people in the development of public policy?

Article 30: Participation in cultural life, recreation, leisure & sport

The Northern Ireland Disability Strategy links Article 30 with Strategic Priority 18, to 'Improve access to sports, arts, leisure and other cultural activities so that people with disabilities have equal access to community life'¹⁹². The Strategy associates Article 30 with a range of PfG commitments including programmes to develop obesity, the development of sports stadiums and the inclusion of social clauses in public procurement contracts.

Mainstreaming

Despite a reference in the Northern Ireland Executive's submission to the UK Initial Report to the development of a Disability Mainstreaming Policy being implemented by Sports Northern Ireland¹⁹³, there is no commentary within the Report on the participation of disabled people in sport in the region. An independent review¹⁹⁴ of the Mainstreaming Policy concluded that progress had been made in a number of areas including:

- a significant increase in investment in sports for disabled people; and

¹⁹² Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of disabled people 2012-2015', page 24. Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁹³ A state funded agency supported by the Department for Culture Arts and Leisure (DCAL).

¹⁹⁴ Sports Northern Ireland (April 2011): 'An Impact Review of Sport Northern Ireland Mainstreaming Disability Policy', Summary of Recommendations and Conclusions, pages 7 and 8 (Belfast: Sports Northern Ireland). Available at: <http://www.sportni.net/NR/rdonlyres/0EFF464A-0F12-4938-B4F6-8191359DE932/0/DMP.pdf>

- the routine solicitation and inclusion of the views of people with disabilities within policy development for sport.

However, the report also noted that:

- There is no current data set which gives an accurate picture of participation either within the disability sports sector as a whole, or within specific disability groupings; and
- Between 33-50% of organisations involved in the promotion and development of sport for people with disabilities in Northern Ireland have yet to embrace an inclusive approach.

The Committee may wish to note that ‘The Northern Ireland Strategy for Sport and Physical Recreation 2009-2019’¹⁹⁵, omitted from both the UK Initial State Report and the Northern Ireland Executive’s submission to that report, included commitments to increase the number of disabled people in sport and physical recreation, by 6% points against a 2011 baseline by 2019¹⁹⁶.

Issues to consider:

- (i) What actions will be taken to achieve a further significant increase in the participation of disabled people in sport in Northern Ireland; and**
- (ii) What arrangements will be made to monitor the effectiveness of these actions (including the collection of disaggregated data)?**

¹⁹⁵ The Department of Culture, Arts and Leisure (DCAL) (2009): ‘Sports Matters Strategy - The Northern Ireland Strategy for Sport and Physical Recreation 2009-2019’. The Strategy aims to deliver an increase in the number of people with a disability who regularly participate in sport and physical recreation, (Belfast: DCAL). Available at: <http://www.sportni.net/NR/rdonlyres/9B4CACD6-CCE5-430A-B427-68BE370E2596/0/SportMatters.pdf>

¹⁹⁶ Ibid, page 27.

Article 31: Statistics and data collection

The Northern Ireland Disability Strategy includes a commitment from the Northern Ireland Executive to ensuring that data sources are identified and developed to measure the outcomes of the Strategy and more widely the UNCRPD¹⁹⁷. There are no references to Article 31 among the commitments made in the PfG.

A set of indicators has been developed by the Northern Ireland Statistics and Research Agency for OFMdfM using data derived from the 2006 Northern Ireland Survey on Activity and Limitation and Disability Survey (NISALD)¹⁹⁸. However, OFMdfM have acknowledged that the baseline indicators proposed¹⁹⁹ have a number of shortcomings. Despite the limitations of the NISALD survey, much of the data obtained has yet to be analysed although it remains relevant to many of the challenges people with disabilities face today²⁰⁰. IMNI has advised that the collection of data and statistics for the purposes of monitoring the Disability Strategy should include other appropriate surveys to provide 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 Strategy²⁰¹. Significant

¹⁹⁷ Office of the First Minister and the deputy First Minister (2013): 'A Strategy to improve the lives of people with disabilities 2012-2015', page 31 (Belfast: OFMdfM). Available at: <http://www.ofmdfmi.gov.uk/index/equality-and-strategy/equality-human-rights-social-change/disability/disability-strategy-2012-2015.htm>

¹⁹⁸ The Northern Ireland Survey of Activity Limitation and Disability (NISALD) was a major study looking at the experiences and lifestyles of disabled people in 2006. The survey includes both adults and children in households and in communal establishments such as residential homes and long stay wards. The last time that a similar survey was conducted it was in 1989. The survey's aim was to provide information on the prevalence of disability and health limitations amongst adults and children as well as information on their experiences and circumstances. The development of the survey had input from the Promoting Social Inclusion Working Group (PSIWG) on Disability. This group included representatives from government departments, the disability sector and representation from the Equality Commission. Available at: <http://www.csu.nisra.gov.uk/NISALD%20Household%20Prevalence%20Report.pdf>

¹⁹⁹ Office of the First Minister and the deputy First Minister (2013): 'Monitoring and Evaluation of the Disability Strategy 2012 -2015, Baseline Indicator Set – Information to Support and Evaluate 'A Strategy to improve the lives of disabled people 2012 -2015'', (Belfast: OFMdfM). Available at: <http://www.ofmdfmi.gov.uk/baseline-indicators-disability-strategy>

²⁰⁰ Equality Commission for Northern Ireland (July 2012): 'Response to OFMdfM Consultation on 'A Strategy to Improve the Lives of Disabled People 2012-2015'', paragraph 188, page 55, (Belfast: Equality Commission NI). Available at: <http://www.equalityni.org/Delivering-Equality/Consultancy-responses?subject=Disability&type=All&year=2012>

²⁰¹ Equality Commission for Northern Ireland (July 2012): 'Response to OFMdfM Consultation on 'A Strategy to Improve the Lives of Disabled People 2012-2015'', paragraph 189, page 55, (Belfast: Equality

work is needed by the State Party to ensure data collection (including disaggregated data) and research is undertaken against all Convention articles.

Issues to consider: What measures will be taken to

- (i) collect sufficient desegregated data relating specifically to people with disabilities (including children and young people) to ensure the effective design, implementation and delivery of the Disability Strategy in Northern Ireland?**
- (ii) ensure appropriate data collection in Northern Ireland across all Convention articles?**

Article 46: Reservations and Interpretative Declarations

IMNI does not believe reservations or interpretative declarations are appropriate in ratifying the Convention and we continue to call for the withdrawal of the three remaining reservations and the interpretative declaration.

Reservation re: Article 18 Liberty of Movement and Nationality

The Review of the reservation by the Home Office in 2012 concluded that the reservation was necessary ‘to retain the right to apply immigration rules, to avoid creating an unnecessary new avenue to challenge immigration decisions due to the optional protocol, and to preserve the right to safeguard the public purse from excessive demands which may be placed on it’²⁰².

This reservation also appears to be out of step with the removal of the similar immigration reservation under the Convention on the Rights of the Child²⁰³.

Commission NI). Available at: <http://www.equalityni.org/Delivering-Equality/Consultancy-responses?subject=Disability&type=All&year=2012>

²⁰² Hansard (22 March 2012) Home Office, The Minister for Immigration (Damian Green), Col 74WS.

²⁰³ The reservation under Article 22 of the Convention on the Rights of the Child was withdrawn just after the examination of the third and fourth UK periodic reports in September 2008. It was in very similar terms to that proposed under the Disability Convention, as follows: “The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in

IMNI considers that this reservation is so broad as to be incompatible with the object and purpose of the Convention and therefore in breach of Article 46. Furthermore, the reservation is not compliant with the principle of non-discrimination as set out in Article 5.

Reservation re: Article 24 Education

IMNI considers the interpretative declaration²⁰⁴ to be unnecessary. The Article sets out a progressively realisable right, not an immediate entitlement. The interpretative declaration has the potential to be incompatible with the Convention's object and purpose²⁰⁵, if the intention or effect is to dilute the requirement on the state to strive progressively to ensure an inclusive education system²⁰⁶. The interpretative declaration appears to have the opposite effect to the UK's stated aim in the Explanatory Memorandum:

the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time." The redundancy of such reservations was pointed out by the NGO Justice some years ago in a review of UK reservations to international human rights instruments: "...reservations to human rights treaties are not necessary as human rights do not confer a right to immigration per se, they confer rights to have applications assessed fairly and to be treated properly in accordance with human rights principles" (<http://www.liberty-human-rights.org.uk/pdfs/policy02/interventions-dec-2002.pdf>).

²⁰⁴ Interpretative Declaration: "The General Education System in the UK includes mainstream, and special schools, which the UK Government understands is allowed under the Convention." Reservation: "The United Kingdom reserves the right for disabled children to be educated outside of their local community where more appropriate education is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated."

²⁰⁵ Article 46(1) of the Convention, restating the rule from Article 19 of the Vienna Convention on the Law of Treaties, states: "Reservations incompatible with the object and purpose of the present Convention shall not be permitted." In addition, "Where the effect of a declarative statement relating to a Convention is to exclude or modify the legal effect of the obligations in the Convention, it is considered to be a reservation, regardless of the label adopted by the state" (see *JCHR Report on the UN Convention on the Rights of Persons with Disabilities*, 4 January 2009, footnote 5). The Joint Committee earlier found that one of the UK reservations to the Convention on the Rights of the Child - the immigration reservation - "read literally would allow the Government to disapply the CRC rights so far as they relate to people who are subject to immigration control. In our view, that would be incompatible with the object and purposes of the CRC, and so would not constitute a valid reservation" (*Seventeenth Report of the JCHR on the Nationality, Immigration and Asylum Bill* at para 17, 21 June 2002). This reservation has now been removed.

²⁰⁶ Article 24 of the Convention states: "In realising this right, states parties shall ensure that... [p]ersons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; [p]ersons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live."

The United Kingdom is committed to continuing 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 children²⁰⁷.

Since the aim stated in the Explanatory Memorandum appears to accord with the requirements of Article 24 in respect of the progressively realisable right to inclusive education, the interpretative declaration is not needed in order to uphold the principle of parental choice in respect of the education of the child. Without the continued development of an inclusive mainstream sector, to which the state is apparently already committed, the parents of a disabled child are likely to find their 'choice' to be more, rather than less, limited.

The Explanatory Memorandum states that the Convention "covers some matters which, under the UK's devolution settlements, are devolved, and the Devolved Administrations have an interest..."²⁰⁸. Education is one of these devolved matters. In addition, the Equality Impact Assessment accompanying the Explanatory Memorandum states:

All Government Departments and the Devolved Administrations have had to consider whether their existing legislation, policies, practices and procedures are compliant with the requirements of the Convention...²⁰⁹

IMNI understands that the Minister for Education for Northern Ireland did not consider any such interpretative declaration necessary in Northern

²⁰⁷ This policy commitment also has a legislative basis; see e.g. the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO). It increased the rights of children with special educational needs to attend mainstream schools and introduced disability discrimination laws for the whole education system in Northern Ireland for the first time. The SENDO presumption is for attendance at mainstream school subject to parental wishes and the efficient education of other pupils. The interpretative declaration tends to undermine that approach and calls into question the long-term policy commitment under SENDO.

²⁰⁸ See para 6.

²⁰⁹ See para 12, Equality Impact Statement. The Explanatory Memorandum also states: "In working towards ratification, Departments and the [devolved administrations] have examined their legislation, policies, practices and procedures, notwithstanding the fact that the UK already has robust anti-discrimination and human rights legislation, to ensure that the UK is compliant" (para 12).

Ireland and that the Minister did not endorse its application here. This calls into question the extent to which appropriate weight was given to the outcome of consultation with the devolved administrations in respect of such devolved matters²¹⁰.

IMNI is aware that the need for inclusion of disabled children has already been the subject of recommendations to the UK from another treaty body. The Committee on the Rights of the Child recommended in September 2008 that the UK:

‘...invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to children from all disadvantaged, marginalised and school-distant groups’²¹¹.

IMNI considers the reservation to be equally unnecessary²¹². Article 24(c) makes it clear that only “reasonable accommodation of the individual’s requirements” must be provided, and therefore this does not give rise to an absolute right to specific provision at the local level for every individual irrespective of cost. Nevertheless, there is an onus on the state to demonstrate the steps it is taking to work towards full compliance with this progressively realisable right.

There are specific Northern Ireland concerns with regard to this reservation. The relatively small, and relatively dispersed, population in the region makes it less likely that the incidence of certain specific disabilities

²¹⁰ The Minister for Disabled People told the JCHR on 18 November 2008: “It is for Departments to determine, just in the same way it is for devolved administrations to determine whether or not they have reservations”; see response to Q 38.

²¹¹ At para 67(b). The Committee also expressed concern that “there is no comprehensive national strategy for the inclusion of children with disabilities into society” (para 52(a)).

²¹² The terms of the reservation are unusual and the language is inappropriate: “The United Kingdom reserves **the right for disabled children** [emphasis added] to be educated outside of their local community where more appropriate education is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated.” The Government is here reserving a position to itself, not granting a right to disabled children. In addition, the opportunity for parents to state a preference in relation to the school they wish their child to attend already exists, independently of any treaty, and does not need to be affirmed least of all by way of a reservation.

will be sufficient to result in specialist provision in close proximity to every child in need. This may, at times, mean that certain children currently have no option but to access specialist provision well outside of their locality, and that can mean greater difficulty and expense than would be the case in other parts of the UK. Local provision is the aim under the Convention, and there are human rights implications in distant provision (notably concerning ECHR Article 8 rights in relation to respect for family life); however, so long as reasonable adjustments are made for individual families to mitigate the impact, and so long as the overall momentum towards progressive realisation of local provision is maintained, these cases are not irreconcilable with the Convention right.

Reservation re: Article 27 Employment

IMNI does not support a reservation in respect of employment in the armed forces,²¹³ and would like to see a review of the exemption in respect of the armed forces under the Disability Discrimination Act. Removal of the exemption would still permit the state to employ objective and necessary job criteria in respect of service in the armed forces, and to maintain its present practice of seeking where possible to recruit or retain people with disabilities by making reasonable adjustments.

Issues to consider: That the UK should provide information about the measures taken to monitor and keep under review the reservations and interpretative declaration.

²¹³ The armed forces reservation is set out as follows in the Explanatory Memorandum: 'The United Kingdom ratification is without prejudice to provisions in Community law that Member States may provide that the principle of equal treatment in employment and occupation, in so far as it relates to discrimination on the grounds of disability, shall not apply to the armed forces. The United Kingdom accepts the provisions of the Convention, subject to the understanding that its obligations relating to employment and occupation, shall not apply to the admission into or service in any of the naval, military or air forces of the Crown'.