



Committee on the Rights of Persons with Disabilities  
Human Rights Council and Treaty Mechanisms Division  
Office of the United Nations High Commissioner for Human Rights  
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1 March 2024

Dear Secretariat,

**Subject: Additional information for the UN Committee on the Rights of Persons with Disabilities to inform its inquiry review into the UK**

The UK Independent Mechanism (UKIM) would like to thank the UN Committee on the Rights of Persons with Disabilities (UN CRPD Committee) for the opportunity to submit oral and written evidence as part of its 29<sup>th</sup> Session in August 2023 to inform its follow-up review of its 2016 inquiry into the rights of Disabled people in the UK.

UKIM is made up of the Equality Commission for Northern Ireland (ECNI), the Equality and Human Rights Commission (EHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Scottish Human Rights Commission (SHRC), jointly designated under Article 33.2 of the UN



CRPD. Our respective mandates, as well as our full analysis of implementation of the inquiry's recommendations, are available in our joint submission of August 2023 entitled [‘Seven Years On: disabled people’s rights to independent living, employment and standard of living in the UK’](#).

Our August 2023 report indicated that little progress had been made to implement the Committee’s recommendations from its inquiry into the UK, which found ‘grave and systematic’ violations of the Convention.

Disabled people and their representative organisations across the UK continue to emphasise the severity of their situation and the regression of rights that they argue has occurred since the UN CRPD inquiry report was published in 2016.<sup>1</sup> Stakeholders also continue to raise concerns that more needs to be done to tackle negative stereotypes and prejudice against disabled people.<sup>2</sup>

This letter provides further information in response to questions asked by the Committee during its session in August 2023, and key updates since that time.

We hope this additional information is useful in your inquiry follow-up review. We look forward to reading your final report and recommendations in due course.

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<sup>1</sup> Meeting between UK DPOs and UKIM (February 2024).

<sup>2</sup> For example, the Chancellor of the Exchequer, Jeremy Hunt, has advised that “Anyone choosing to coast on the hard work of taxpayers will lose their benefits.” The Secretary of State for Work and Pensions, Mel Stride, has further commented that “our message is clear: if you are fit, if you refuse to work, if you are taking taxpayers for a ride – we will take your benefits away.” See for instance UK Government (November 2023), [Employment support launched for over a million people](#).



Yours sincerely,

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## **ANNEX: Further information for the Committee**

### **UKIM Mandate Summary**

1. As set out in the letter, the UK Government has jointly designated the EHRC, NIHRC, ECNI and SHRC as UKIM. UKIM is not a single legal entity. UKIM does not have a standalone statutory basis, and the role of each institution within UKIM is not reflected in their legislative mandate. UKIM does not have a specific budget, nor do the institutions included within UKIM receive ring fenced funding beyond their core budgets to support their work as part of UKIM.
2. Each institution has its own arrangements for consulting and engaging with disabled people and their representative organisations. These initiatives are funded through each institution's core budget. In 2021, the EHRC provided £75,000 for the development of independent shadow reports from civil society in England, Scotland and Wales for the (subsequently postponed) UK examination under the CRPD. Funding is also provided where possible to support direct participation of disabled people and their organisations in UN CRPD Committee evidence sessions, including for the August 2023 inquiry review session.

## **Significant legal and policy developments since August 2023**

### **Northern Ireland Assembly**

3. Northern Ireland remained without a functioning Executive, until the return of the Assembly on 3 February 2024 and the subsequent nomination of Executive Ministers. This has resulted in a significant lack of progress on issues affecting disabled people. The reinstatement of the Northern Ireland Executive and Northern Ireland Assembly is welcomed, however it does not guarantee that the required UN CRPD-related actions will be implemented expeditiously, if at all.
  
4. The 2023-2024 budget for NI resulted in significant reductions across all Northern Ireland Departments. Consequently, there have been wide-ranging cuts to public services and programmes. As part of restoration of the NI devolved institutions, the UK Government has pledged a further £1 billion to Northern Ireland to stabilise public services. With a continued reliance on annual budgets, this additional money will not address the wider need for long-term stability. It is unclear if this money will be used to reinstate services that were lost due to the cuts. Furthermore, these additional funds will not address the extensive reforms that are urgently required across all Northern Ireland's public services.<sup>3</sup>

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<sup>3</sup> Northern Ireland Fiscal Council (February 2024), [Northern Ireland's public financial support package for the restored Executive](#), Technical Paper 01/24

5. There are similar concerns about the impact of the central budget for Scotland.<sup>4</sup>

## National Disability Strategy and Disability Action Plan

6. In September 2023, the UK Government confirmed it would begin implementing its National Disability Strategy, which was partially paused after a 2022 High Court judgment found it to be unlawful due to failures to properly consult disabled people. The Court of Appeal overturned this ruling in July 2023.
7. In parallel, the UK Government published a 12-week consultation on the short-term Disability Action Plan 2023-2024.
8. The Disability Action Plan<sup>5</sup> was subsequently published in February 2024 with 32 actions for government across 14 areas.<sup>6</sup> Disabled people and their organisations have expressed concern that the Action Plan will not result in transformative change or deliver short-

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<sup>4</sup> For instance see Scottish Parliament Information Centre (2024), [Scottish Budget 2024-25](#); University of Strathclyde (2023), [Scottish Budget 2024-25: initial reaction](#); Institute for Fiscal Studies (2023), [Initial IFS response to the Scottish Budget](#).

<sup>5</sup> Disability Unit (February 2024), [Disability Action Plan](#).

<sup>6</sup> Action areas: support disabled people run for elected public office; include disabled people's needs in emergency and resilience planning; include disabled people's needs in climate -related policies; improve information and outcomes for families in which someone is disabled; make playgrounds more accessible; help businesses understand the needs of and deliver improvements for disabled people; explore if the UK could host the Special Olympic World Summer Games; support people who have guide and assistance dogs; help the government measure how effective its policies and services are for disabled people; research issues facing disabled people in the future; make government publications and communications accessible; improve understanding of the cost of living for disabled people; promote better understanding of the UNCRPD across government; monitor and report progress of the Disability Action Plan.

term impact for disabled people ahead of the next General Election.<sup>7</sup> The EHRC has yet to analyse the plan in detail, given its recent publication date.

9. In Wales, the Disability Rights Taskforce<sup>8</sup> – a group established by the Welsh Government aiming to remove inequalities experienced by disabled people – is also expected to publish a new Disability Rights Action Plan in spring 2024.<sup>9</sup> The priorities for the taskforce are: embedding and understanding the social model of disability across Wales; access to services (including communications and technology); independent living (health and wellbeing); independent living (social care); travel; employment and income; affordable and accessible housing; and children and young people.
10. The Scottish Government made a commitment in the 2023 Programme for Government to introduce an Immediate Priorities Plan ahead of a Scotland specific disability strategy for devolved areas of policy. This has not yet been introduced, and disabled people’s organisations have expressed concern about the slow pace of progress. The Scottish Government specifically needs to develop a

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<sup>7</sup> For instance see DR UK; Greater Manchester Coalition for Disabled People; Inclusion London; Disability Positive; Disability Peterborough (February 2024), [Disability Rights UK responds to Disability Action Plan](#).

<sup>8</sup> The Disability Rights Taskforce was established by the Welsh Government in response to ‘Locked Out: Liberating Disabled People’s Lives and Rights in Wales beyond COVID-19’, published by the Disability Equality Forum. Read more about the taskforce here: Welsh Government (January 2023), [Disability Rights Taskforce, What we do](#).

<sup>9</sup> Jane Hutt MS, Minister for Social Justice (March 2023), [Written Statement: Update on the Disability Rights Taskforce](#).

clear strategy to address mounting pressures on health and social care services, discussed further below.

11. This is coupled with concern about how the Scottish Government's proposed model for a Human Rights Law for Scotland will ensure meaningful accountability for violations of disabled people's rights.
12. Due to the lengthy suspension of the NI Assembly, there has been a significant lack of progress on the publication of a disability strategy for Northern Ireland. It has been emphasised by stakeholders that any disability strategy should fully incorporate the views of disabled people as expressed within the disability strategy's co-design group and expert advisory panel report.<sup>10</sup>

#### **The UN CRPD Committee may wish to ask:**

- **The UK Government what its plans are for implementing the Disability Action Plan.**
- **The Scottish Government how it plans to ensure a disability strategy is in place in Scotland across devolved areas, specifically addressing concerns about health and social care.**
- **The Northern Ireland Executive what urgent steps it will take to secure the rights of disabled people, including through the publication and implementation of a Disability Strategy for Northern Ireland and associated outcome focused action plan.**

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<sup>10</sup> IMNI Roundtable (February 2024).



## Minister for Disabled People

13. In December 2023 Mims Davies was appointed as Parliamentary Under Secretary of State for Disabled People following a Cabinet reshuffle. Mims Davies was appointed in a more junior role than her predecessor as Parliamentary Under Secretary of State. She will combine the role with her existing ministerial responsibilities for young people and social mobility. This is a recent development, and we have yet to see the full impact of this change, but the decision to appoint a more junior Minister to the role has been criticised by charities and Members of Parliament (MPs), with concerns that it diminishes the rights of disabled people to be effectively represented.<sup>11</sup>
14. UKIM considers that the Minister for Disabled People has at times played a key role in promoting a joined-up government approach to disability policy, chairing an interdepartmental group on disability,<sup>12</sup> and UKIM is keen for this work to continue with this new Ministerial appointment.

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<sup>11</sup> Disability News Service (December 2023), [Disabled Tories threaten to quit party after disability minister role is downgraded](#).

<sup>12</sup> Hansard (January 2014), The Minister of State, Department for Work and Pensions (Mike Penning), [Better Working with Disabled People: The Way Forward](#).

**The UN CRPD Committee may wish to ask the UK Government about the Minister for Disabled People’s portfolio and priorities for promoting the rights of disabled people.**

### **Reform to the Work Capability Assessment (WCA)**

15. In November 2023, following an eight-week consultation period, the UK Government published its plans to implement changes to the Work Capability Assessment (WCA) in England, Wales and Scotland.<sup>13</sup> The changes include:

- Amending the Limited Capability for Work Related Activity (LCWRA) Substantial Risk regulations to specify the circumstances, and physical and mental health conditions, for which LCWRA Substantial Risk should apply.
- Removing the LCWRA Mobilising activity.
- Reducing the points awarded for the Limited Capability for Work (LCW) Getting About descriptors.<sup>14</sup>

16. The Government has advised these changes will be implemented no earlier than 2025.

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<sup>13</sup> DWP (November 2023), [Government Response to the Work Capability Assessment: Activities and Descriptors Consultation](#).

<sup>14</sup> DWP (November 2023), [Government Response to the Work Capability Assessment: Activities and Descriptors Consultation](#).

17. The Institute for Fiscal Studies has advised that ‘The Impact of the (proposed) reform on those individuals who will no longer qualify for the LCWRA group is significant. Not only will they lose out on the additional income (typically almost £400 per month) that LCWRA claimants are entitled to, but they will also be required either to prepare for work or to search for a job in order to keep receiving benefits.’<sup>15</sup>
18. Stakeholders have raised concerns that the proposed changes, in particular the proposal to amend the ‘substantial risk’ criteria, could place disabled people at increased risk of both financial and psychological harm, with potentially serious equality and human rights implications.<sup>16</sup>
19. The UN CRPD Committee has previously expressed concerns about shortfalls in the realisation of rights to adequate standard of living, social protection and independent living. Stakeholders have drawn attention to the risk that a further reduction in income could lead to further harm to the rights of disabled people, as they already face disproportionately lower income and higher poverty levels.
20. A judicial review claim has been commenced in relation to the consultation process, with concerns raised about the timeframe and accessibility of the consultation, as well as a lack of transparency on

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<sup>15</sup> Institute for Fiscal Studies (2023), [IFS responds to changes to DWP Work Capability Assessments](#).

<sup>16</sup> Equality and Human Rights Commission (26 October 2023), [Letter to Rt Hon Mel Stride MP, Secretary of State for Work and Pensions: Consultation on Workplace Capability Assessment: activities and descriptors](#).

the cost saving benefits of the reforms.<sup>17</sup> The published consultation materials did not include an analysis of the potential impact of the proposed changes on disabled people or other protected characteristic groups.

**The UN CRPD Committee may wish to ask the UK Government how it intends to respond to the concerns raised by disabled people and their representative organisations in relation to the proposed reforms to the Work Capability Assessment. This includes how it intends to ensure that disabled people are not disadvantaged by the introduction of conditionality and increased sanctions, and that sufficient supports are in place for both disabled people and employers with regard to making necessary reasonable adjustments in the workplace. Will the UK Government publish a full consultation response?**

## **Data Protection and Digital Information Bill**

21. The UK Parliament is currently considering the Data Protection and Digital Information Bill. In November 2023, an amendment was made to the Bill which would give the Department for Work and Pension (DWP) the power to compel banks or other relevant third parties to provide any data it requested to monitor for fraud and error.<sup>18</sup> The

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<sup>17</sup> Disability News Service (December 2023), [Court set to be told how DWP misrepresented plans to reform 'fitness for work' test – Disability News Service](#).

<sup>18</sup> House of Commons (November 2023), [Data Protection and Digital Information Bill \(Amendment Paper\)](#).

proposed amendment “would allow regular checks to be carried out on the bank accounts held by [social security recipients] to spot increases in their savings which push them over the benefit eligibility threshold, or when people spend more time overseas than the benefit rules allow for.”<sup>19</sup> The DWP already has the power to investigate when it has a suspicion of fraud. Broadening this power to allow for regular check without suspicion may have implications for the privacy rights of social security recipients and disproportionately affect disabled people who claim benefits.

22. The Bill further proposes a significant change to the current protection from automated decision-making. Clause 14 of the Bill (Automated decision-making) is intended to replace Article 22, UK General Data Protection Regulation with new proposed articles 22A-22D and will allow fully automated decision-making subject to some safeguards. Automated decision making within the social security system may impact on individuals’ human rights, as flawed design choices can deprive people of the essential benefits they need to live.<sup>20</sup> UKIM further notes the risk that artificial intelligence (AI) tools and algorithms can contain encoded biases, resulting in discriminatory automated decision making.<sup>21</sup> Within Northern Ireland, the proposed changes may also result in a diminution of data protection rights that

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<sup>19</sup> DWP (November 2023), [Changes to data protection laws to unlock post-Brexit opportunity](#).

<sup>20</sup> For instance see Human Rights Watch (September 2020), [Automated Hardship: How the Tech-Driven Overhaul of the UK’s Social Security System Worsens Poverty | HRW](#); Child Poverty Action Group (January 2023), [You Reap What You Code](#).

<sup>21</sup> Special Rapporteur on the Rights of Persons with Disabilities (December 2021), [Artificial Intelligence and the rights of persons with disabilities](#).



would run contrary to the commitment in Windsor Framework Article 2.<sup>22</sup>

**The UN CRPD Committee may wish to ask the UK Government whether the proposed changes contained within the Data Protection and Digital Information Bill are compatible with the rights of disabled people. In addition, how it ensures that the rights of disabled people are not negatively affected by AI biases and inaccurate or discriminatory automated decision making, particularly within social security and employment.**

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<sup>22</sup> Northern Ireland Human Rights Commission (January 2024), [Publication - NIHRC Briefing on the Data Protection and Digital Information Bill | Northern Ireland Human Rights Commission](#).

## **Additional information requested by the Committee**

### **COVID-related deaths**

23. In England, between January 2020 and March 2022, disabled people had higher death rates linked to the COVID-19 virus compared to non-disabled people during each of the three waves of the pandemic.<sup>23</sup> This risk of death linked to COVID-19 was 1.4 times higher for men, and 1.6 times greater for women who described themselves (in the 2011 census) as ‘more-disabled’, compared to non-disabled men or women. The risk was 1.3 times higher for men and women who were ‘less-disabled’ (as per the census) compared with non-disabled men or women.
24. In 2021, disabled people in Wales published the report ‘Locked out: liberating disabled people’s lives and rights in Wales beyond COVID-19,’<sup>24</sup> where they shared that, at the time, 68% of deaths from COVID-19 were among disabled people in Wales. They noted that social factors including discrimination, poor housing, poverty, employment status, institutionalisation, lack of PPE, poor services, inaccessible public information and personal circumstances all contributed to this figure.

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<sup>23</sup> Office for National Statistics (May 2022), [Updated estimates of coronavirus \(COVID-19\) related deaths by disability status, England: 24 January 2020 to 9 March 2022](#).

<sup>24</sup> Welsh Government’s Disability Equality Forum (July 2021), [Locked out: Liberating disabled people’s lives and rights in Wales beyond COVID-19](#).

25. In Northern Ireland researchers have published analysis of COVID-19 deaths and equality in Northern Ireland.<sup>25</sup> Their report addressed evidence gaps for COVID-19 deaths in relation to equality groups, health and socio-demographic characteristics. It covers the period from March 2020 to November 2021.
26. For the period March 2020 to November 2021, persons who self-reported a disability at the time of the 2011 Census had a higher risk for both COVID-19 (+42%) and non-COVID-19 (+40%) mortality compared to ‘non-disabled’ people, after accounting for age, sex, area of residence, socio-demographic characteristics and health.
27. After adjusting for age, area of residence, socio-demographic characteristics and health, female disabled individuals had a statistically significant greater risk of COVID-19 death in 2020 (74% greater likelihood compared to non-disabled females) compared to male disabled individuals (26% greater likelihood compared to non-disabled males).
28. In Scotland, of the 3,933 deaths involving COVID-19 in 2022, 96% (3,774) had at least one pre-existing medical condition.<sup>26</sup> These figures are not standardised for age or other characteristics. After adjusting for age, the National Records for Scotland reported in

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<sup>25</sup> For further details see ADR Northern Ireland and Hughes, J. et al (22 November 2022), [Covid-19 Deaths: March 2020 – November 2021: Analysis of Equality Group, Health and Socio-demographic Characteristics](#).

<sup>26</sup> National Records of Scotland (July 2023), [COVID-19 deaths 2022, Report](#).



March 2021 that disabled women whose daily activities were limited a lot were 3.2 times as likely to die with COVID-19 compared to non-disabled women. Disabled men whose daily activities were limited a lot were 3.0 times as likely to die with COVID-19 compared to non-disabled men.<sup>27</sup> The Scottish Learning Disabilities Observatory (SLDO) also published research which found that, after adjusting for age, people in the learning/intellectual disabilities population were 3.7 times more likely to die from COVID-19 than those in the general population.<sup>28</sup>

## Intersectionality

29. Section 14 of the Equality Act 2010 contains a provision for dual discrimination. It is intended to allow those who have experienced less favourable treatment because of a combination of two relevant protected characteristics to bring a direct discrimination claim. This section of the Equality Act 2010 is not currently in force.
30. In Northern Ireland, individuals experiencing intersectional and/ or multiple discrimination face a number of difficulties in seeking legal redress; this is primarily due to the fact that current legal processes solely focus on one prohibited factor at a time and are unable to adequately address in tandem discrimination complaints on more than one ground.

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<sup>27</sup> National Records of Scotland (March 2024), [Deaths involving coronavirus \(COVID-19\) in Scotland, Week 11: Report](#).

<sup>28</sup> Scottish Learning Disability Observatory (n.d.), [Life expectancy and mortality](#).

31. Unlike Great Britain, Northern Ireland does not have a Single Equality Act. Instead, there is a patchwork of legislative protections based on individual equality grounds, each offering differing levels of protection.<sup>29</sup>

### **Examples of good practice in social security**

32. On examples of best practice, UKIM highlights that Scotland has pursued a differentiated approach following devolution of some elements of the society security in 2016. The Social Security System in Scotland represents some examples of improvement possible with fairly limited powers and resources for divergence, there remains much overlap with the UK-wide approach. Significant changes have been relatively minimal as the Scottish Government has prioritised ‘safe and secure’ transition.
33. Scotland established its new Social Security Agency underpinned by the Social Security (Scotland) Act 2018 and has introduced some new, some replacement and some ‘top-up’ benefits under its new powers. This includes the Adult Disability Payment (ADP) which replaces PiP in Scotland.

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<sup>29</sup> For further information see Equality Commission for Northern Ireland (n.d.), [Single Equality Act, what you need to know](#).

34. The 2018 Act established a set of principles<sup>30</sup> for the delivery of social security which include recognition that social security is a human right, “essential to the realisation of other human rights,”<sup>31</sup> respect for the dignity of individuals is at the heart of the social security system,<sup>32</sup> and that the social security system is designed with the people of Scotland, on the basis of evidence.<sup>33</sup>
35. While the recognition of social security as a human right demonstrates a shift towards a rights-based approach, this is undermined by the lack of justiciability of the principles and limited roots to accountability.
36. The 2018 Act further requires the creation of a Scottish social security charter, which will lay down standards for the provision of social security in Scotland that are aligned with the Scottish social security principles.<sup>34</sup>

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<sup>30</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, section 1. The identified social security principles are: (a) social security is an investment in the people of Scotland; (b) social security is itself a human right and essential to the realisation of other human rights; (c) the delivery of social security is a public service, (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system; (e) the Scottish social security system is to contribute to reducing poverty in Scotland; (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence; (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which— i) put the needs of those who require assistance first, and ii) advance equality and non-discrimination; and (h) the Scottish social security system is to be efficient and deliver value for money.

<sup>31</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, section 1, subsection (b).

<sup>32</sup> [Social Security \(Scotland\) Act 2018](#), section 1, subsection (d).

<sup>33</sup> [Social Security \(Scotland\) Act 2018](#), section 1, subsection (f).

<sup>34</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, sections 15-19.

37. The Social Security Charter,<sup>35</sup> published in 2019, outlines what can be expected of Social Security Scotland, the Scottish Government, and of customers. These expectations include a commitment from the Scottish Government to develop policy that seeks to advance the human right to social security, as well as equality, non-discrimination as defined in laws, treaties and guidance and to publicly challenge the myths and stereotypes about social security so as to reduce stigma and negativity; to respect the dignity of people using the service; and to generally promote a more positive view of social security.
38. Despite the Charter promoting a significant divergence in the way social security is administered in Scotland, stakeholders report limited evidence that that Charter has altered substantive aspects of social security. The Social Security (Scotland) Act 2018 does provide for the practical application of the principles in some ways. The 2018 Act requires Scottish Ministers to promote take-up of the Scottish social security system.<sup>36</sup> Further to this, the 2018 Act requires Scottish Ministers to have regard to the importance of both inclusive communication<sup>37</sup> and accessible information,<sup>38</sup> in the promotion of take-up, stipulating that information must be provided

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<sup>35</sup> Social Security Scotland (2019), [Our Charter - What you can expect from the Scottish Government and Social Security Scotland](#).

<sup>36</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, section 3.

<sup>37</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, section 4.

<sup>38</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, section 5.

in a way that is accessible for individuals who “have a sensory, physical, or mental disability.”<sup>39</sup>

39. The 2018 Act also includes a duty on Scottish Ministers to have regard to the importance of independent information, advice and advocacy.<sup>40</sup>
40. In the spirit of the principles, the ADP and Child Disability Payment have made changes to assessment processes. The 2018 Act provides for a restriction of assessments of applicants’ physical and mental health by individuals who not acting in the course of employment by a public body.<sup>41</sup> Moreover, an assessment is only to be conducted when it is the only practicable means to obtain the information required to determine what assistance the individual is eligible for,<sup>42</sup> and the individual’s preferences for how and where the assessment is conducted must be considered by Scottish Ministers.<sup>43</sup>
41. Despite ADP being a less burdensome and more dignified assessment process, it remains based on the PiP criteria. Disabled People and DPOs have raised numerous concerns about the mobility component and report that waiting times for decisions have increased considerably.<sup>44</sup> Recent Social Security Statistics show

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<sup>39</sup> Ibid, at subsection (1).

<sup>40</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, section 6.

<sup>41</sup> [Social Security \(Scotland\) Act 2018](#), 1, section 12.

<sup>42</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, section 14, subsection (a).

<sup>43</sup> [Social Security \(Scotland\) Act 2018](#), Part 1, section 14, subsection (b).

<sup>44</sup> For instance see Scottish Independent Living Coalition (May 2023), [Meeting of the SILC to discuss the 2016 CRPD Inquiry](#).

that 36% of applications have been rejected and the average processing time is 83 days, and to 5 months for Child Disability Payment.<sup>45</sup> An independent review of ADP was announced in 2023 and a chair appointed in January 2024.<sup>46</sup>

## Independent Living, Social Care and Article 19

42. As highlighted in our 2023 report to the Committee, the right to independent living has not been fully incorporated into domestic law, and in 2021 the EHRC published a model to strengthen the right to independent living,<sup>47</sup> including several actions for the UK Government which have not been adopted.<sup>48</sup>
43. The EHRC continues to look at how people with learning disabilities and autism are given choice and control over their place of residence and with whom they live, and how they access community-based services on an equal basis with others. The UK Government's Building the Right Support Action Plan<sup>49</sup> (published in July 2022) aims to strengthen community support for people with learning disabilities and autism in England. At the end of December

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<sup>45</sup> Social Security Scotland (2023), [Adult Disability Official Statistics](#); Social Security Scotland (2023), [Child Disability Payment: high level statistics to 30 September 2023](#).

<sup>46</sup> Scottish Government (January 2024), [Ensuring Adult Disability Payments meet people's needs](#).

<sup>47</sup> Equality and Human Rights Commission (2021), [Strengthening the Right to Independent Living](#).

<sup>48</sup> Recommendations for this model include introducing a statutory Public Section Inclusion Objective, a qualified presumption in favour of living in the community, the right for disabled people to decline care, and a prohibition on the establishment of further institutional accommodation, among others. See Equality and Human Rights Commission (2021), [Strengthening the right to independent living](#), pp 49-54.

<sup>49</sup> Department for Health and Social Care (July 2022), [Building the Right Support Action Plan](#).

2023, there were 2,030 inpatients with a learning disability and / or autism and the EHRC continues to work with the UK government to identify options to improve this number.

44. In Northern Ireland, the demand for social care is increasing and access to funding is decreasing.<sup>50</sup> Disability Action recently conducted a small research study on Adult Social Care. 40 respondents, including d/Deaf and disabled people, carers, people who have a family member with a disability or work with deaf and disabled people, completed a questionnaire. The research found that 87% of respondents believed that NI does not have a rights-based approach to independent living. 74% of respondents felt that d/Deaf and disabled people have little or no choice and control in relation to social care in NI.<sup>51</sup>
45. Adult Social Care services are continuing to undergo reform with an emphasis upon prevention, more support for making individual's homes the centre of care where possible, centralisation of specialist services, and better cooperation (and efficiency) between different sites and services... budget pressures continue to place pressure on services and limit the impact of reform.<sup>52</sup> Participants in the qualitative research underpinning this study emphasised the need to invest in and value social care to enable d/Deaf and disabled people

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<sup>50</sup> British Medical Association (2020), [Social care in Northern Ireland](#).

<sup>51</sup> McDonald, A. (2017), [Is Adult Social Care Legislation and Policy Compliant with Article 19 of UNCRPD?](#) Belfast: Disability Action.

<sup>52</sup> Disability Action (February 2022), [Progress on the implementation of the UNCRPD in Northern Ireland](#).

to live independently.

46. The NI Disability Strategy Expert Advisory Panel report made the following recommendations specific to UN CRPD Article 19:

- adopt any final recommendations from the Independent Living Fund (ILF) Working Group including agreed options and terms for reopening the Fund to new applicants;
- recommendations for the improvement of the operation of ILF taking account of experience of ILF recipients;
- consider the recommendations of ‘Power to People Report’<sup>53</sup> – specifically the human rights approach proposed in reform of adult social care; recognise personal assistants as distinct from carers in adult social care, and ensure they are available to all d/Deaf and disabled people especially marginalised groups including people with learning disabilities and people who have experience of mental health services;
- promote and facilitate the use of self-directed support and direct payments including accessible information to ensure all d/Deaf and disabled people can access and use these options<sup>54</sup>.

47. As noted above, the Scottish Government is pursuing legislation to incorporate international treaties, including the UNCRPD,<sup>55</sup> into

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<sup>53</sup> Expert Advisory Panel on Adult Care and Support (December 2017), [Power to the People – proposals to reboot adult social care in Northern Ireland](#).

<sup>54</sup> Department for Communities (December 2020), [Disability Strategy Expert Advisory Panel: Report and Recommendations](#).

<sup>55</sup> Along with the International Convention on Economic, Social and Cultural Rights, The UN Convention on the Elimination of all forms of Discrimination Against Women and the Convention on the Elimination of Racial Discrimination.



domestic law. Since August, a public consultation has concluded (October 2023) on the model of incorporation. As a result of recent rulings in the UK Supreme Court on the constitutional powers of the Scottish Government under the Scotland Act 1998, navigating the equal opportunities reservation has become more complex. The Scottish Government proposes to incorporate the UN CRPD through a process duty over as opposed to a compliance duty, in part to manage an overlap with the Equality Act 2010. However, the consultation demonstrated particularly strong public support for a stronger approach to incorporation of the Convention, with a particular focus on Article 19. The Scottish Government is currently preparing its draft Bill, which will be laid before the Scottish Parliament before the Summer of 2024

48. The SHRC is concerned about the slow pace of progress to implement the Coming Home Report Recommendations, which committed the Scottish Government reducing delaying discharge and out of area placements for people with learning disabilities and complex needs. The SHRC is currently carrying out work to development human rights measurement of deinstitutionalisation, based on indicators developed by the Fundamental Rights Agency.
49. Since UKIM attended the follow up dialogue in August 2023, the Scottish Government has reopened the Independent Living Fund to new applicants, as recommended in our August 2023 report. This

was accompanied by a £9 million investment as part of the 2024-25 Scottish Budget.

50. However, a recent (February 2024) report from the Scottish national audit body, Audit Scotland has warned that that there is severe pressure on services, including growing demand, operational challenges and increasing costs.<sup>56</sup> Audit Scotland specifically recommended that the Scottish Government develop a “a clear national strategy for health and social care” to ensure the financial sustainability of Scotland’s health service and warned that without reform longer-term affordability is at risk.<sup>57</sup>
51. There are significant delays in securing social care packages in all parts of Scotland, with 29% of older people and 35% of younger adults waiting over 6 weeks for an assessment to be completed. 29% of adults between 16 and 65 wait more than six weeks from assessment to receiving a personal care service.<sup>58</sup> Social care charges are increasing across Scotland, and the Govan Law Centre has been granted permission to proceed with a legal challenge to the lawfulness of Glasgow City Council’s Charging Policy.<sup>59</sup> The Law Centre argues that the Policy has increased charges for some

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<sup>56</sup> Audit Scotland (February 2024), [NHS in Scotland 2023](#).

<sup>57</sup> Audit Scotland (February 2024), [Clear vision needed for health and social care](#).

<sup>58</sup> Scottish Government (October 2023), [Social care: eligibility criteria and waiting times Scotland 2022-2023](#).

<sup>59</sup> B v. Glasgow City Council (pending). See information from Govan Law Centre (February 2024), [Permission to proceed granted for test case challenge to 50% increase in social care charges for disabled Glaswegians](#).

disabled people by 65% in relation to charges before 10 April 2023 or a 50% increase in relation to charges from 10 April 2023

52. The Scottish Parliament continues to consider proposals to introduce a National Care Service to deliver social care in Scotland, based on the principles underpinning the National Health Service. However, the plans have continually been delayed as Scottish Government reconsiders its approach.<sup>60</sup> In February 2024, the Scottish Parliament's Health and Sport Committee gave the Bill qualified support to proceed through the legislative process, noting its 'concern that the Scottish Government has so far been unable to articulate and communicate a model of how the proposed National Care Service would operate'.<sup>61</sup>

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<sup>60</sup>Minister for Social Care, Mental Wellbeing and Sport (December 2023), [Letter from the Minister for Mental Wellbeing and Social Care to the Convener of 11 December 2023](#).

<sup>61</sup> Scottish Parliament Health and Sport Committee (February 2024), Stage 1 [Report on the National Care Service \(Scotland\) Bill](#).