

# **Overview of key concerns about social security reforms and protecting disability rights in the United Kingdom**

Briefing by the United Kingdom Independent Mechanism (UKIM) under the UN Convention on the Rights of Persons with Disabilities

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Questions and comments regarding this briefing paper may be addressed to:

**Equality and Human Rights Commission:**

Carla.Garnelas@equalityhumanrights.com

Laura.Hutchison@equalityhumanrights.com

**Equality Commission for Northern Ireland**

P.Noonan@equalityni.org

**Northern Ireland Human Rights Commission**

Hannah.Russell@nihrc.org

**Scottish Human Rights Commission**

Cathy.Asante@scottishhumanrights.com

## 1. Summary

This briefing by the United Kingdom Independent Mechanism (UKIM)<sup>1</sup> provides an overview of key concerns about the lack of government progress in protecting the rights of disabled people in the UK, with a particular focus on the adverse impact of social security reforms on disabled people.

In an inquiry that concluded in 2016, the UN Committee on the Rights of Persons with Disabilities (UN Committee) found evidence of grave and systematic violations of disabled people's rights to: an adequate standard of living and social protection; work and employment; and independent living.

The UN Committee also raised concerns and made recommendations about these three issues and a range of others – such as barriers to disabled people's rights in education, access to justice, participation in public life, and healthcare - as part of its first review of the UK's compliance with the UN Convention on the Rights of Persons with Disabilities (UN Convention) in August 2017.<sup>2</sup>

UKIM, along with disabled people's organisations, wants to see progress on implementing *all* of the UN Committee's recommendations to strengthen the protection of disabled people's rights in the UK. However, the UK Government has yet to take any concrete steps to address the concerns and recommendations of the UN Committee.

The Government has recently announced that it plans to establish an Inter-Ministerial Group on Disability and Society.<sup>3</sup> Details of this proposed Group, including how it will relate to devolved governments, involve disabled people's organisations and UKIM, and its remit in relation to addressing the UN's recommendations are unclear.

This briefing paper focuses on the adverse impact of social security reforms on disabled people due to the gravity and immediacy of this issue, and recommends the UK Government takes immediate action, in line with the UN Committee's recommendations, to ensure the rights of disabled people are protected and strengthened.

## **UKIM's key concerns:**

- **To date, the UK Government has not made any commitment to implementing the UN Committee's recommendations, including those related to social security reforms.**
- **The UK Government also rejected the UN Committee's recommendations on social security reform in its 2016 inquiry report.**
- **However, disabled people continue to face serious regression of their rights to an adequate standard of living and social protection, and to live independently and be included in the community.**

## **We recommend the UK Government:**

- **Sets out how it plans to comprehensively address the UN Committee's recommendations, including those related to social security.**
- **Clarifies whether the new Inter-Ministerial Group on Disability and Society will be the vehicle through which the UK Government will take forward the UN Committee's recommendations; how it will relate to devolved governments; and how it will work with disabled people's organisations and UKIM.**

**Section 2** considers the strong evidence base for these concerns.

**Section 3** provides additional background information about the UNCRPD, the UN Committee, and its considerations to-date of the UK's adherence to the UNCRPD.

## 2. Issue

There has been overwhelming evidence from an extensive range of sources that aspects of welfare reform are linked to significant adverse impacts on disabled people. Evidence from disabled people and their organisations, disability charities, Parliamentary Committees, academics, churches, trade unions and local and international equality and human rights organisations paints a concerning picture of regression on disabled people's rights.<sup>4</sup>

In its 2016 inquiry report, the UN Committee found evidence of grave and systematic violations of disabled people's rights to an adequate standard of living and social protection, to work and employment, and to independent living, and made recommendations to address these violations.<sup>5</sup> However, the UK Government rejected *all* of the Committee's findings and recommendations. The UN Committee made subsequent recommendations in August 2017.<sup>6</sup> However, the UK Government has still not taken any concrete steps to address the concerns and recommendations of the UN Committee.

This is despite ongoing evidence of continuing adverse impact on disabled people. The UK Government's own statistics demonstrate that a substantially higher proportion of individuals who live in families with disabled members live in poverty, compared with individuals who live in families where no one is disabled.<sup>7</sup> Additional evidence presented by UKIM in its most recent submission to the UN Committee shows:

- a high proportion of disabled people resorting to the use of food banks;
- a higher proportion of disabled people being disadvantaged as a result of the introduction of the Employment and Support Allowance (ESA), particularly the negative impact of Work Capability Assessments and ESA conditionality on the mental health of claimants;
- disabled people being disproportionately affected by the new sanctions regime;<sup>8</sup> and

- continued regression in disabled people's right to live independently in the community, including the risk of re-institutionalisation posed by the funding cap policies of Clinical Commissioning Groups in England.<sup>9</sup>

In March 2018, a cumulative impact assessment of tax and benefit changes between 2010-2018, commissioned by the EHRC, shows that households with one or more disabled members will face large and disproportionately negative impacts compared with households with no disabled members, demonstrating continued regression in rights protection for disabled people going forward. The report found that, as a result of reforms, in 2021-2022, households with at least one disabled adult and a disabled child will lose over £6,500 a year – over 13% of their annual income.<sup>10</sup>

The Government has rejected the UN Committee's recommendations which, given the above evidence, is unjustified.

On 22 May 2018, the Minister of State for Disabled People announced the creation of a new Inter-Ministerial Group on Disability and Society.<sup>11</sup> However, details of this proposed Group, including how it will relate to devolved governments, involve disabled persons organisations and UKIM, and its remit in relation to addressing the UN Committee's recommendations are unclear.

### 3. Background

The UN Committee on the Rights of Persons with Disabilities (UN Committee), an international body of independent experts on disability rights,<sup>12</sup> monitors implementation of the UN Convention on the Rights of Persons with Disabilities (UN Convention) by State Parties. The UK ratified and became a State Party to the UN Convention in 2009. As a binding international legal instrument, this requires the UK to adhere to the obligations contained within the UN Convention, and to implement the requirements of the Convention in good faith.<sup>13</sup> The UK Government and the devolved governments of Scotland, Wales and Northern Ireland are responsible for ensuring that the UN Convention is implemented throughout the UK.

The Optional Protocol to the UN Convention establishes the communications procedure and the inquiry procedure. The UK Government is a party to the Optional Protocol, which means that it recognises the competence of the UN Committee to receive complaints from individuals, and to conduct inquiries into serious allegations of violations of the UN Convention in relation to the UK.

#### Inquiry

The UN Committee launched an inquiry into the impact of social security reforms on disabled people in the UK in 2014. The first of its kind globally, the inquiry process was conducted over two years and involved a team of UN Committee members gathering and analysing comprehensive written and oral evidence on failings to comply with Articles 19, 27 and 28 of the UN Convention. This included an in-country visit and engagement with a range of key stakeholders including disability civil society organisations, academics, government departments, parliamentarians and UKIM. The UN Committee published its findings and recommendations in November 2016.

The UN Committee made eleven specific recommendations for action.<sup>14</sup> Key recommendations include:

- Ensure that: any **intended legislation and/or policy measure respects the core elements of the rights** analysed in the present report; persons with disabilities retain their **autonomy, choice and control over their place of residence** and with whom they live; they receive **appropriate and individualized support**, including through personal assistance, and have **access to community-based services** on an equal basis with others; they have **access to security social schemes that ensure income protection**, including in relation to the extra cost of disability, that is compatible with an adequate standard of living and ensure their **full inclusion and participation in society**; and they have access and are **supported in gaining employment in the open labour market** on an equal basis with others;
- Ensure that public budgets take into account the rights of persons with disabilities, **that sufficient budget allocations are made available to cover extra costs** associated with living with a disability and that appropriate mitigation measures, with **appropriate budget allocations, are in place for persons with disabilities affected by austerity measures**;
- **Introduce all adjustments necessary** to make all information, communications, administrative and legal procedures in relation to **social security entitlements, independent living schemes and employment/unemployment-related support services fully accessible** to all persons with disabilities; and
- **Ensure access to justice**, by providing appropriate legal advice and support, including through **reasonable and procedural accommodation** for persons with disabilities seeking redress and reparation for the alleged violation of their rights, as covered in the present report.<sup>15</sup>

In its response to the UN Committee's Inquiry Report, the UK Government stated it "strongly disagrees with the conclusions reached in the report produced by the UN Committee".<sup>16</sup> It continued: "individuals and organisations may disagree with the current approach to welfare reform, but the Government does not accept the Report's conclusion that there is evidence of grave and systematic violation of the rights of disabled people".<sup>17</sup>

UKIM agrees with the conclusions of the UN Committee, which are based on thorough, participatory, independent research. UKIM also strongly advises that the grave and systematic violations identified need to be addressed and that the overall approach of the UK Government towards social security protection requires an overhaul, guided by human-rights compliance, to ensure disabled people's rights are respected, protected and fulfilled.

### Concluding Observations

In ratifying the UN Convention, the UK is required to report on its compliance with this Convention every four-five years. This enables the UN Committee to examine the UK and make recommendations.

The UN Committee's first examination of the UK's compliance with the UN Convention was completed in August 2017. The UN Committee issued a set of recommendations for how the UK should improve its compliance with the Convention across the range of obligations it sets out.

In its recommendations, the UN Committee reinforced the findings and recommendations of its Inquiry and specifically recommended, under Article 28 (adequate standard of living and social protection), that the UK:

- Introduce, adopt and implement legislative frameworks to **ensure that social protection policies and programmes across the State party secure income levels for all disabled persons and their families**, by



taking into account the additional costs related to disability, and ensuring the possibility of disabled persons to exercise their parental responsibilities. The State party must **ensure that persons under the new Employment and Support Allowance Work Related Activity Group have access to full compensation** of disability related costs.

- **Carry out a cumulative impact assessment, based on disaggregated data, of the recent and forthcoming reforms of the social protection system for persons with disabilities**, and in close collaboration with organizations of persons with disabilities define, implement and monitor **measures to tackle retrogression in their standard of living** and use the cumulative impact assessment as a basis for policy development across the State party;
- Repeal the Personal Independent Payment (Amendment) Regulations of 2017 and **ensure that eligibility criteria and assessments to access Personal Independent Payments, Employment Support Allowance, and Universal Credit are in line with the human rights model of disability**;
- **Ensure that the budget allocation is sufficient for local authorities to meet their responsibilities** regarding assistance for persons with disabilities, and **extend support packages to mitigate the negative impacts** of social security reform in Northern Ireland; and
- **Conduct a review of the conditionality and sanction regimes** concerning the Employment and Support Allowance, and **tackle the negative consequences on the mental health and situation** of persons with disabilities.<sup>18</sup>

Domestically, the longer the UK Government ignores these recommendations, the greater the negative impact on disabled people. The UK Government has asserted its commitment “to equality for disabled people” and “to remove barriers to create opportunities for disabled people to fulfil their potential and be fully participating members of society”.<sup>19</sup> A continued lack of action from the UK Government on the UN Committee’s recommendations – which were informed by the personal experiences of many disabled people – goes against this commitment. In addition, while the UK Government has highlighted that “almost 600,000 disabled people have moved into work over the last four years” and it has spent “over £50 billion a year to support disabled people and those with health conditions”,<sup>20</sup> a wealth of evidence clearly demonstrates a pattern of regression on the UK’s commitments under the UN Convention.

Internationally, the UK Government promotes itself as a leader in disability rights and a proactive supporter of the UN Convention.<sup>21</sup> However, the UK’s inertia in relation to the UN Committee’s recommendations sets a worrying example for other countries. A number of international human rights mechanisms have raised the same concerns as the UN Committee, and urged the UK to take swift action, including the UN Committee on Economic, Social and Cultural Rights,<sup>22</sup> and the UN Special Rapporteurs on poverty, housing, disability and food.<sup>23</sup> A forthcoming visit by the UN Special Rapporteur on extreme poverty to the UK scheduled for November 2018 will again shine a light on the adverse impacts of social security reforms, unless prompt mitigating action is taken.

The Vice-Chair of the UN Committee stated during the UK’s review in August 2017 that the UK is no longer a world leader on disability rights.<sup>24</sup> If it is to regain this title, the UK government must take decisive steps towards implementing the above recommendations.

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<sup>1</sup> In 2009, the UK Government designated the Equality and Human Rights Commission (EHRC), the Equality Commission for Northern Ireland (ECNI), the Northern Ireland Human Rights Commission (NIHRC) and the Scottish Human Rights Commission (SHRC) as the UK Independent Mechanism (UKIM) under the UNCRPD, Article 33. UKIM is tasked with promoting, protecting and monitoring implementation of the UNCRPD.

<sup>22</sup> The UNCRPD Committee also made concluding observations regarding equality and non-discrimination (Article 5), women with disabilities (Article 6), children with disabilities (Article 7), awareness raising (Article 8), accessibility (Article 9), right to life (Article 10), situations of risk and humanitarian emergencies (Article 11), equal recognition before the law (Article 12), access to justice (Article 13), freedom from torture or cruel, inhuman or degrading treatment or punishment (Article 15), freedom from exploitation, violence and abuse (Article 16), protecting the integrity of the person (Article 17), liberty of movement and nationality (Article 18), living independently and being included in the community (Article 19), freedom of expression and opinion, and access to information (Article 21), right to respect for private and family life (Article 23), education (Article 24), health (Article 25), work and employment (Article 27), participation in cultural life, recreation, leisure and sport (Article 30), statistics and data collection (Article 31), international cooperation (Article 32), and national implementation and monitoring (Article 33). See CRPD/C/GBR/CO/1, 'Concluding Observations on the Initial Report of the UK of Great Britain and NI', 29 August 2017. Available [here](#) [accessed: 21 March 2018].

<sup>3</sup> See: <https://hansard.parliament.uk/commons/2018-05-21/debates/C9F3BE31-D224-4098-B796-C1E05765341E/OralAnswersToQuestions>

<sup>4</sup> This wide range of evidence is referenced through UKIM's submission to the UNCRPD Committee. See UK Independent Mechanism, 'Disability Rights in the UK' (UKIM, 2017). Available [here](#) [accessed: 21 March 2018].

<sup>5</sup> CRPD/C/15/R.2/Rev.1, 'Inquiry concerning the UK of Great Britain and NI carried out by the Committee under article 6 of the Optional Protocol to the Convention: Report of the Committee', 6 October 2016, at 21. Available [here](#) [accessed: 21 March 2018].

<sup>6</sup> CRPD/C/GBR/CO/1, 'Concluding Observations on the Initial Report of the UK of Great Britain and NI', 29 August 2017. Available [here](#) [accessed: 21 March 2018].

<sup>7</sup> See Department for Work and Pensions, 'Households below average income: An analysis of the income distribution 1994/95 – 2015/16' (DWP, 2016). Available [here](#) [accessed: 21 March 2018].

<sup>8</sup> Local Government Association, 'The Cumulative Impact of Welfare Reform: A National Picture' (LGA, 2017). Available [here](#) [accessed: 21 March 2018]. Recent research commissioned by the Local Government Association on the cumulative impact of welfare reform found that around 900,000 disabled people will see their weekly incomes fall by at least £50 a week by 2020 whilst the average household containing a person with a disability under Universal Credit will be worse off in 2020 by £51.47 per week.

<sup>9</sup> UK Independent Mechanism, 'Disability Rights in the UK' (UKIM, 2017). Available [here](#) [accessed: 21 March 2018]. The contents of the UKIM report are congruent to evidence presented to the CRPD Committee by Deaf and Disabled People's Organisations and other civil society organisations.

<sup>10</sup> EHRC (2018), 'The cumulative impact of tax and welfare reforms'. Available [here](#).

<sup>11</sup> See: <https://hansard.parliament.uk/commons/2018-05-21/debates/C9F3BE31-D224-4098-B796-C1E05765341E/OralAnswersToQuestions>

<sup>12</sup> See: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

<sup>13</sup> Article 26 of the Vienna Convention on the Law of Treaties states "every treaty in force is binding upon the parties to it and must be performed by them in good faith". This is the internationally recognised principle of *pacta sunt servanda* (treaties shall be complied with), a principle of international law that underlies the system of treaty-based relations between sovereign States.

<sup>14</sup> CRPD/C/15/R.2/Rev.1, 'Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland Carried Out by the Committee Under Article 6 of the Optional Protocol to

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the Convention: Report of the Committee', 6 October 2016, at para 114(a)-114(k). Available [here](#) [accessed: 21 March 2018].

<sup>15</sup> Ibid, at para 114(c)-114(f).

<sup>16</sup> CRPD/C/17/R-3, 'The United Kingdom Government Response to the Report of the United Nations Committee on the Rights of Persons with Disabilities under Article 6 of the Optional Protocol to the Convention', Data Unknown, at para 1. Available [here](#) [accessed 21 March 2018].

<sup>17</sup> Ibid.

<sup>18</sup> CRPD/C/GBR/CO/1, 'Concluding Observations on the Initial Report of the UK of Great Britain and NI', 29 August 2017, at para 59. Available [here](#) [accessed: 21 March 2018].

<sup>19</sup> Office for Disability Issues, 'UK Initial Report on the UN Convention on the Rights of Persons with Disabilities' (ODI, 2011), at para 2.

<sup>20</sup> May Bulman, 'UN denounces British government for failing to protect disabled peoples' rights', *The Guardian*, 31 August 2017.

<sup>21</sup> Ibid

<sup>22</sup> CESCR (2016), 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland', paras 18-19. Available [here](#).

<sup>23</sup> Special Rapporteurs' Joint communication to the UK Government on the Welfare Reform and Work Act, Ref: AL GBR 1/2016, 08/04/2016, p. 39. Available [here](#).

<sup>24</sup> Coomaravel Pyaneandee speaking at examination of UK during UNCRPD Committee's Eighteenth Session, 14-31 August 2017.