

# The United Nations Committee on the Rights of Persons with Disabilities review of disability rights in the UK: What next for Scotland?

## Conference report

This report has been produced by the Equality and Human Rights Commission and was written with the support of Malcom Sayers of Cambium Advocacy [www.cambiumadvocacy.co.uk](http://www.cambiumadvocacy.co.uk)

The views in this report do not necessarily represent the views of the Commission. The Commission has produced this report to support disabled people and their organisations in Scotland.

For further information about the Commission's work on UN CRPD please visit our website. [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

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## Introduction

The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) is an international human rights agreement that the UK has signed up to. The agreement sets out what countries must do to make sure that disabled people have the same rights as everyone else. Every four years, the UN Disability Committee ('the UN Committee') reviews how well the UK is performing on disability rights.

In August 2017, the UN Committee reviewed the UK's performance for the first time. Disabled people and their organisations, national human rights organisations, and the UK and devolved governments all gave evidence to the UN Committee.

After hearing this evidence, the UN Committee decided how well it thinks the UK is performing on disability rights and made recommendations for action. The UN Committee published this information in a report in October 2017 titled 'Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland' ('the UN Committee's concluding observations').

## Conference

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Following publication of the UN Committee's concluding observations, the Equality and Human Rights Commission and Scottish Human Rights Commission ('the Commissions'), in partnership with Inclusion Scotland and People First Scotland, held a conference in Edinburgh and Inverness on 6 March 2018. Over 120 people attended.

The conference had two parts. First, a guest panel discussed questions about the UN Committee's review of disability rights in the UK. Second,

workshops discussed the UN Committee’s concluding observations that are relevant to the work of the Scottish Government.

### About this report

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This report provides a summary of the views shared by the Deaf and disabled people who attended the conference. The purpose of the report is to be a resource for Deaf and disabled people. It can be used to help achieve improvements in disability rights and to monitor how well the Scottish Government is responding to the UN Committee’s concluding observations. A copy of the report will also be sent to the Scottish Government.

## What needs to happen next in Scotland?

This report contains information about what the Deaf and disabled people attending the CRPD Conference in March 2018 said must happen in Scotland to make sure disabled people are given their human rights.

Deaf and disabled people shared their views during the workshop part of the conference. The workshops considered the UN Committee's concluding observations relevant to the work of the Scottish Government.

The concluding observations are available on the [UN CRPD website](#). The Equality and Human Rights Commission ('the Commission') has produced a plain English version, easy read summary and British Sign Language (BSL) video of the concluding observations so that all disabled people can find out exactly what Governments have been asked to do. These are available on [the Commission's website](#).

The workshops were arranged around eight topics:

1. Health
2. Employment
3. Education
4. Access to justice and detention
5. Independent living and social security
6. Supported decision making
7. Access to services and the wider environment
8. Participation and action to implement UN CRPD

Workshops concerning all eight topics took place in Edinburgh and workshops concerning five of the topics took place in Inverness.

The people in each workshop were asked to talk about:

- The changes or actions Deaf or disabled people would like to see in Scotland over the next four years and what this might look like
- Who should lead on delivering change and when should it happen?
- How can we check that action is taken?

# Health

## Right to life (Article 10)

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The UN Committee is concerned that decisions are being made on behalf of disabled people about stopping their medical treatment and care that are not in line with their right to life and position as equal members of society.<sup>1</sup>

It recommended that government:

- Produce an action plan to stop disabled people being perceived as not having ‘a good and decent life’ and to recognise that they are equal to other people
- Ensure that disabled people have full access to life-sustaining medical treatment and care.

### **Deaf and disabled people said:**

There needs to be action to educate relevant professionals about disabled people’s right to make their own decisions in the same way other people can. An action plan should build on positive practice elsewhere and should include the experiences of children and young people.

## Protecting the integrity of the person (Article 17)

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The UN Committee is concerned that disabled people, including women; intersex people; children and young people, continue to be subjected to forced medical treatment, including sterilisation.<sup>2</sup>

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<sup>1</sup> Paragraph 27 of the concluding observations.

<sup>2</sup> Paragraph 40 of the concluding observations.

It recommended that government:

- Reverse all laws, regulations and practices allowing any form of forced medical care or surgery
- Ensure that disabled people (especially women; intersex people; children and young people) are supported in making decisions.

### **Deaf and disabled people said:**

There is a need to review existing legislation and practice in relation to forced medical treatment. There needs to be clear accountability for decisions, and sanctions must be enforced against those who carry out treatment without consent.

## **Health (Article 25)**

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The UN Committee is concerned about:

- The existence of widespread barriers – including those in the physical environment, and in relation to information, communication and attitudes – that prevent disabled people from accessing mainstream health services and keeping personal health-related data private
- Reported cases where no attempt was made to resuscitate disabled people
- The high suicide rate among disabled people.<sup>3</sup>

It recommended that government:

- Develop a focused and fully funded action plan to remove barriers in disabled people's access to health care and services, and monitor and measure the plan's progress
- Ensure that disabled people have equal access to sexual and reproductive healthcare services, and make information on family planning available in accessible formats
- Ensure that medical professionals follow guidance on 'do not resuscitate' orders for disabled people on an equal basis with those for non-disabled people
- Tackle the high suicide rate among disabled people, especially people with learning disabilities or mental health conditions.

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<sup>3</sup> Paragraph 54 of the concluding observations.

### **Deaf and disabled people said:**

Deaf and disabled people and their organisations need to play a central role in the development of an action plan to remove barriers to health care. This must go beyond consultation and focus on disabled people 'being in the room' and making the decisions.

Strong effective leadership at all levels is required and change will not happen of its own accord. A nationally coordinated effort will be required to drive change at local levels and to include local communities.

The action plan should:

- Provide equal status to mental and physical health services
- Deliver integrated health and social care services with good communication between those services
- Make sure that information about sexual and reproductive health, and personal medical and health care records, are available in different formats and people are supported to access and understand them
- Ensure that health professionals receive education and training on the guidance for 'do not resuscitate' orders for disabled people and related human rights standards, and that resources are prioritised to ensure this training and education is provided.

Action to reduce the suicide rate should focus on:

- The social model of disability
- Tackling the isolation felt by disabled people by making sure people can access (for example) transport, peer support, creative arts, sporting events, informal digital support, 'men's sheds' and mindfulness training
- Being open and talking about suicide
- Making real efforts to remove stigma with public messages that are about disabled people's strengths, not shortfalls
- Publishing sources of help and support that promote conversation-starters within workplaces and other social settings
- Creating spaces for sharing experiences.

# Employment

## Work and employment (Article 27)

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The UN Committee is concerned that disabled people remain less likely to be in employment and are paid less on average than non-disabled people.<sup>4</sup>

It recommended that government develop, introduce and monitor an effective employment policy for disabled people to ensure that they can access decent work, and that there is equal pay for work of equal value.

### **Deaf and disabled people said:**

The Scottish Government needs to work with Deaf and disabled people to develop and review employment policies. Employment policies for Deaf and disabled people should include consideration of:

- An employment subsidy for disabled people to increase access to the workplace
- An equal pay campaign
- Making access to independent advocacy a statutory right for disabled people
- Setting up a new body focused on promoting disabled people's employment rights
- A citizens' basic income and more support for self-employed disabled people
- Returning employability services for disabled people to the public sector and making the system much more transparent
- Tackling the interaction of Employment Support Allowance and internships that means disabled interns lose out financially

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<sup>4</sup> Paragraph 56 of the concluding observations.

- Making sure support into employment is separate from Job Centre services (which are often focused on full-time work).

The UN Committee is also concerned that not enough has been done to ensure disabled people can gain and maintain employment.<sup>5</sup>

It recommended that government:

- Ensure reasonable adjustments are made for disabled people who need them to do their jobs, that regular training about reasonable adjustments is available to employers and employees, and that there are effective penalties when reasonable adjustments are not made
- Ensure that the support disabled people need to work is not conditional on disabled people seeking jobs.

### **Deaf and disabled people said:**

- The Scottish Government should consider whether it has power to introduce a statutory duty to make reasonable adjustments within a specified timescale (for example, three months).
- Many employers are concerned by the administrative burden of making reasonable adjustments. Ways to overcome this barrier should be conceived.
- Interview processes need to be improved and the public sector should play a role in driving improvements here. For example, interviewers can be overly cautious about asking questions about disability and adjustments and this can prevent them from asking necessary, supportive questions. Interviewees can also be uncertain when the best time is to ask for adjustments. More guidance would be useful.
- School careers advice should be reviewed because it is not working for disabled pupils.
- There is no information given to disabled pupils about employers having to make reasonable adjustments.
- There should be more projects to support disabled school leavers.
- The Scottish Government should consider raising the age limit for Modern Apprenticeships.
- The Scottish Government should review Access to Work funding and support.
- The development and use of independent advocacy is vital.

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<sup>5</sup> Paragraph 56 of the concluding observations.

# Education

## Education (Article 24)

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The UN Committee is concerned that the education system still includes special schools and that it is not yet equipped to deliver high-quality inclusive education.<sup>6</sup>

According to the UN Committee, all parts and levels of the education system should meet the requirements of all students so that disabled learners can learn alongside their non-disabled peers within mainstream school classrooms. This means that resources for improving education for disabled children should be focused on improving provision in mainstream schools, rather than on maintaining separate special schools.

It recommended that government:

- Develop laws and policies to support inclusive education, set a timeframe for improving the way schools include disabled children, and make sure that all teachers and all other professionals who work with children understand the importance of inclusive education
- Do more to check whether schools are enrolling disabled children, and tackle disability related discrimination or harassment
- Put in place a fully funded strategy, with concrete timelines and measurable goals, to make education more inclusive. The strategy should cover implementation of laws and policies, teacher training, awareness raising among parents of disabled children, and data collection about where disabled children go to school.

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<sup>6</sup> Paragraph 52 of the concluding observations.

**Deaf and disabled people said:**

It is vital that the voices of disabled pupils and their parents are part of developing any policies, strategies and practices that the Scottish Government pursues in this area. The Scottish Government must ask disabled people what aspects of special schooling they think should be made a part of mainstream education.

The UK has a reservation that states they can opt out of CRPD Article 24 concerning education. The Scottish Government should do what it can to remove this reservation as soon as possible and, at the very least, before 2022. The Scottish Government should take full account of CRPD general comment number 4 about children's right to inclusive education. This should include focusing on tackling the need for more and appropriate resources to achieve inclusive education.

There should be a fully funded strategy from the Scottish Government to develop and deliver a national plan for inclusive education within the next three years. The national plan should incorporate how to include disabled children in mainstream education.

National qualifications should be as flexible as possible.

There is a need for data on the attainment levels of disabled pupils in special schools compared with those in mainstream schools. Data would help encourage gatekeepers (such as school heads) to change their attitudes to disabled pupils attending mainstream schools. Disabled people and the advisory group on additional support for learning should be involved in developing the data set that will be used.

It is important that schools make legislation and rights-based information accessible for disabled children and their parents.

Services that already exist for education like Contact, Enquire, and Lead Scotland should be strengthened. These services must be resourced and promoted to schools.

Teachers need more in-depth and regular training led by disabled people, including training about disability discrimination and harassment.

### Children with disabilities (Article 7)

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The UN Committee is concerned that data on bullying of disabled children is not adequately monitored, despite evidence of a rise in bullying, hate speech and hate crime against disabled children.<sup>7</sup>

It recommended that government:

- Set up an independent monitoring process to review the experiences of disabled children in school, especially those who face bullying
- Do more to stop bullying, hate speech and hate crime against disabled children.

#### **Deaf and disabled people said:**

Anti-bullying policies need to include processes for collecting, publishing and using data about bullying in relation to pupils' protected characteristics. There should be an assessment of what schools are doing to tackle prejudice and bullying and an evaluation of the consequences of these actions. Schools need to be proactive by identifying what action they need to take, taking action and evaluating whether they are making a difference.

Schools should have groups who develop inclusive practices and who collect and learn from case studies about how to eradicate the bullying of disabled children, and the loneliness and isolation that disabled people experience disproportionately. In developing anti-bullying practices, schools should include children and young people who want to act as allies. Embedding equality education in schools is vital, and disabled people and pupils should lead sessions on disability equality.

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<sup>7</sup> Paragraph 20 of the concluding observations.

Teachers, pupils and parents need to go through the process of breaking down their own prejudice. Social and emotional wellbeing classes could incorporate this process.

# Access to justice and detention

## Access to justice (Article 13)

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The UN Committee is concerned that:

- There is a low awareness of disabled people's rights among judges, prosecutors, police officers, and prison staff
- People with mental health conditions or learning disabilities do not always receive the right support to access justice
- People with hearing impairments who need a sign language interpreter are not allowed to sit on a jury.<sup>8</sup>

It recommended that government:

- Develop and introduce programmes to make judges, prosecutors, police officers and prison staff aware of disabled people's rights
- Put in place a system to support disabled people, particularly those with learning disabilities and mental health conditions, to make decisions in court proceedings
- Encourage and support disabled people to work in the justice system
- Ensure that all disabled people are able to exercise their rights within the justice system by making appropriate adjustments
- Allow Deaf people to sit on juries through the use of sign language interpreters.

### **Deaf and disabled people said:**

The Scottish Courts and Tribunal Service need to review accessibility immediately. Courts should be required to make a public statement or commitment about how they will treat disabled people and make reasonable adjustments.

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<sup>8</sup> Paragraph 32 of the concluding observations.

Programmes to raise awareness of disabled people's rights must be delivered in collaboration with disabled people and be properly resourced. This goal must be reached within two years.

It should be made clear that advocacy is a right for disabled people going through the court system and a right to have 'people you trust' involved in decision making. The right to advocacy should be actively promoted. Advocates for those without capacity to make decisions must have access to medical records.

Actions should be developed immediately to help disabled people get jobs in the justice system. This work should be done in collaboration with disabled people and properly resourced.

### **Freedom from exploitation, violence and abuse (Article 16)**

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The UN Committee is concerned that there are differences in laws and sentences for different types of hate crime.<sup>9</sup>

It recommended that government:

- Develop a clear definition of disability hate crime and ensure that people who commit these crimes are prosecuted and convicted
- Ensure that there is independent monitoring of all facilities and programmes designed for disabled people to prevent violence, exploitation and abuse.

#### **Deaf and disabled people said:**

They hoped the Bracadale review of hate crime legislation would take fully into account the UN Committee's concluding observations and disabled people's rights under CRPD.

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<sup>9</sup> Paragraph 38 of the concluding observations.

## Liberty and security of the person (Article 14)

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The UN Committee is concerned that laws allow disabled people to be involuntarily detained and treated, both inside and outside of hospitals, on the basis of their impairment.<sup>10</sup>

It recommended that government reverse laws allowing people to be detained and treated without their consent on the basis of their impairment, and properly investigate and put an end to all forms of abuse of disabled people in institutions.

### Deaf and disabled people said:

- There is a need to overhaul the assessment processes related to deciding if someone has significantly impaired decision-making ability.
- The Scottish Government should take into account the UN Committee's views as part of the consultation on proposed reforms to the Adults with Incapacity (Scotland) Act 2000.
- Action to properly investigate and put an end to all forms of abuse of disabled people in institutions needs to be taken immediately.
- The Scottish Government should invest more resources to support people to live in their communities.

## Freedom from torture and cruel, inhuman or degrading treatment or punishment (Article 15)

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The UN Committee is concerned that physical, mechanical and chemical restraint (including the use of Tasers) continues to be used on people with mental health conditions in prisons, the youth justice system, healthcare and education settings, and that the use of segregation and seclusion continues in these settings.<sup>11</sup>

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<sup>10</sup> Paragraph 34 of the concluding observations.

<sup>11</sup> Paragraph 36 of the concluding observations.

It recommended that government put an end to restraint for reasons related to disability, and end segregation and isolation practices in settings such as prisons, hospitals, and the youth justice system.

**Deaf and disabled people said:**

The use of some forms of restraint may be justified, but only if restraint is required to protect a disabled person or others. Action needs to be taken immediately to identify where people with mental health conditions are being segregated and isolated in Scotland. Where segregation and seclusion are taking place, they must be stopped immediately.

# Independent living and social security

## Living independently and being included in the community (Article 19)

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The UN Committee is concerned that living independently and being included in the community is not recognised as a human right in law, and recent policy changes, lack of support services and accessible public facilities are undermining this right.<sup>12</sup>

It recommended that government:

- Recognise disabled people's right to live independently and be included in the community in law, so that this right can be enforced in the courts.
- Ensure sufficient funding and strategies for social support and independent living and carrying out regular checks, working closely with disabled people's organisations, to make sure that policy reforms do not have negative effects on disabled people.
- Provide adequate, dedicated funding to local authorities and administrations, including the devolved governments, to enable disabled people to live independently and be included in the community, and to choose where they live and who they live with.
- Work closely with disabled people's organisations to draw up a thorough plan to move disabled people from institutions into the community, and ensure they are fully supported in the community.
- Fully fund support services to ensure that they are available, affordable, and suitable for the needs and living conditions of all disabled people.

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<sup>12</sup> Paragraph 44 of the concluding observations.

### **Deaf and disabled people said:**

The Scottish Government should provide adequate funding for independent living and should use the lived experiences of Deaf and disabled people when deciding what adequate funding looks like.

To implement all these recommendations the Scottish Government (and other public bodies) need to:

- Take action now, because a crisis is developing and ensure services are affordable and suitable for needs. Take a longer-term and more rational approach to funding.
- Work with Deaf and disabled people's organisations and service providers at planning stage.
- Recognise the consequences for disabled people of the shortfall in NHS budgets, community care funding and limited resources for overnight care, and take this into account in the funds provided for independent living.
- Tackle the ongoing disconnect between healthcare and social care support when patients are discharged.
- Provide more advocacy support.

### **Adequate standard of living and social protection (Article 28)**

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The UN Committee is concerned that austerity measures have had severe consequences for disabled people and their families (especially families with disabled children), leading to increased reliance on food banks. Particular problems noted include:

- The criteria for accessing social security and support
- Reductions in the level of social security through the welfare system
- The lack of compensation for disability-related costs
- Problems with Personal Independence Payments.<sup>13</sup>

It recommended that government:

- Bring in laws to ensure that social security policies and programmes protect the income levels of disabled people and their families, taking into account the extra costs that come with disability

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<sup>13</sup> Paragraph 58 of the concluding observations.

- Carry out an assessment of the overall consequences of the recent and forthcoming changes to the social security system for disabled people, and take action to tackle reductions in disabled people's standard of living
- Ensure that local authorities have enough funds to meet their responsibilities to support disabled people.

**Deaf and disabled people said:**

There needs to be less face-to-face health assessments when someone is applying for social security assistance and greater trust of GPs and consultants. If health assessments are required, they should be done in a setting with accessible facilities and allow advocacy support. Joint NHS and Local Authority Boards need to plan and commission services in consultation and collaboration with Deaf and disabled service users.

**Children with disabilities (Article 7)**

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The UN Committee is concerned that there are no plans to tackle the problem that many families with disabled children live in poverty.<sup>14</sup>

It recommended that government cut the high levels of poverty among families with disabled children.

**Deaf and disabled people said:**

The Scottish Government needs to take action on social security immediately, in preparation for taking responsibility for disability benefits. Local authorities and health boards need to take action and involve Deaf and disabled service users in decision making.

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<sup>14</sup> Paragraph 20(a) of the concluding observations

# Supported decision making

## Equal recognition before the law (Article 12)

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The UN Committee is concerned that some laws restrict the legal capacity of disabled people on the basis of their impairment and disabled people often have their decisions made for them (substitute decision making) instead of being given support to make their own decisions (supported decision making).<sup>15</sup>

It recommended that government:

- Abolish ‘substituted decision making’ (where decisions are made for disabled people) by reforming mental capacity and mental health laws and policies
- Improve ‘supported decision making’ by developing ways of supporting disabled people to make their own decisions; for example, through research and sharing good practice.

### **Deaf and disabled people said:**

There is a need for people to be empowered, supported and provided with information about their rights. The starting point in law and practice must be to support, not take away people’s right to make decisions; and to enable, not disable. The Scottish Government must be ambitious about what it can achieve in relation to supported decision making. It should consider international examples, including developing a national register of supported decision makers and an approach based on the Swedish system of Personal Ombudsman Advocacy.

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<sup>15</sup> Paragraph 30 of the concluding observations.

Supported decision making should be available more widely; and not just for adults with incapacity. A specialist court of support could be developed. There should be formal recognition of those providing support. Those providing support should be invited to formal meetings and given training. Action should be taken to educate adults, especially parents, educators and providers of children's services, about the rights of children. There is a need for training for supporters (guardians) and for those being supported.

Independent advocacy should be built into legislation, with funding and accountability. Independent advocacy services for adults with mental health conditions and for children should be protected. Actions on advocacy should begin immediately and the reform of the Adults with Incapacity Act should drive progress.

The third sector and disabled people's organisations need to feed views into the Scottish Government, which should lead, with support from the Children and Young Persons Commissioner for Scotland, Scottish Parliament, Scottish Association for Mental Health, NHS, and local authorities. The Scottish Government needs to take these views into account.

Reform of law and practice should also be driven by the Mental Welfare Commission, Office of the Public Guardian, Health Improvement Scotland, and professional bodies. Doctors, lawyers, judges and social workers need to build up practice once the law is reformed.

# Access to services and the wider environment

## Accessibility (Article 9)

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The UN Committee is concerned that legal standards need to be improved to make the physical environment, housing, transport, information and other services more accessible to disabled people. It is also concerned that austerity measures are obstructing improvements in accessibility for disabled people.<sup>16</sup>

It recommended that government:

- Improve legal accessibility standards across all areas of the CRPD, including: the design of the physical environment; green and public spaces; housing; information and digital technology; transport; and emergency services
- Monitor progress towards improving accessibility for disabled people and take action against those who ignore their responsibilities.

### **Deaf and disabled people said:**

The Scottish Government and other decision makers need to change their approach to decision making, and should do more than consulting Deaf and disabled people about what needs to change. Deaf and disabled people should be part of the decision making process and therefore must be in leadership positions, elected positions, and public appointments, and be independent advisors.

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<sup>16</sup> Paragraph 24 of the concluding observations.

To allow Deaf and disabled people to participate and access services on a basis equal to that enjoyed by others, there must be access to advocacy support for all disabled people and not only those with a learning disability. There needs to be recognition that advocacy is needed to support disabled people to find out about their rights, where to get information and how to challenge decisions about their lives. There needs to be a better understanding across all sectors that, if a Deaf or disabled person can speak for themselves, this doesn't necessarily mean they don't need other forms of support to access services in the same way as others.

The Scottish Government needs to revise planning guidance on health care, housing and public spaces, and introduce a legal requirement or minimum standard to involve Deaf and disabled people in this process. The Scottish Government should think about how to provide effective opportunities for Deaf and disabled people to be involved in planning decisions.

Planning officers and decision makers need to undertake Disability Equality Training. The regulations that affect the design of houses and planning need to be reviewed because they do not meet the needs of all wheelchair users. The Scottish Government needs to prioritise increasing the stock of adapted or adaptable housing stock. Supported accommodation is not serving the needs of the Deaf and disabled people living there. There needs to be a shift in the focus of people managing supported accommodation onto the rights of service users. Information on supported accommodation needs to be dual language as Deaf people are sometimes also disabled: subtitles alone may not suffice as not all Deaf people are bilingual.

Action is required to drop kerbs and to ensure there are clear boundaries in shared spaces between traffic and pedestrians. Changing Places

toilets<sup>17</sup> that are designed for people with complex care needs should be built as standard in all public buildings.

### **Women with disabilities (Article 6)**

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The UN Committee is concerned that the rights of disabled women and girls are not being included in policies and programmes on both gender equality and disability.<sup>18</sup>

It recommended that government include the rights of disabled women and girls in gender equality and disability policies, in close consultation with disabled women's organisations.

#### **Deaf and disabled people said:**

The Scottish Government needs to demonstrate that it recognises that Deaf and disabled women have a private and family life. It needs to identify the extent to which Deaf and disabled women can access the same services as other women and take action to make sure they can.

It can be difficult for Deaf and disabled women who may be able to benefit from gender equality and disability policies to feed in their views. This difficulty needs to be recognised and more needs to be done to improve awareness and the accessibility of consultations. This work has to be achieved by putting in place procedures that make sure change happens consistently for all national and local consultations.

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<sup>17</sup> More information is available from the [Changing Places toilets campaign](#).

<sup>18</sup> Paragraph 18 of the concluding observations.

# Participation and action to implement UN CRPD

## General principles and obligations (Articles 1–4)

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The UN Committee is concerned that not enough is being done in applying the CRPD consistently across the UK to involve disabled people in decisions that affect their lives, and to put the human rights model of disability into practice. It is also concerned that there has not been a full review of the laws and policies, and that laws and practices discriminate against disabled people.<sup>19</sup>

It recommended that government:

- Make the CRPD a part of Scots law, so that it can be enforced in Scottish courts
- Ensure that the human rights model of disability is protected by law and informs policies affecting disabled people
- Financially support disabled people's organisations
- Ensure that disabled people are fully involved in developing and implementing all policies and laws that affect their lives, and developing action plans for implementing the CRPD across the UK with the full participation of disabled people. These plans should be measurable, properly funded and regularly monitored
- Carry out a full review of the law and policies to bring them into line with the CRPD and develop a plan of action to abolish any laws, regulations, customs and practices that discriminate against disabled people. This plan should be measurable and fully funded.

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<sup>19</sup> Paragraph 6 of the concluding observations.

**Deaf and disabled people said:**

An appropriately resourced monitoring and implementation framework with built in accountability is required for assessing how well rights under the CRPD are being met, which would include the collation and assessment of evidence. This should include the skills and expertise of lawyers with lived experience of disability, Deaf and disabled people, academics, and the UK Independent Mechanism. The Scottish Government needs to have an ongoing dialogue with members of the CRPD Committee and Deaf and disabled people about delivering rights under CRPD.

More diversity of funding is required for civil society organisations. When developing laws and policies, people must be engaged with and consulted, using the communication methods and formats that are most accessible and appropriate for them. This includes BSL, easy read formats and working with people face-to-face rather than relying on paper-based consultations. There is a need to guard against research and consultation fatigue.

There needs to be a greater focus on action by local authorities and Health and Social Care Partnerships, with greater participation of Deaf and disabled people in the decision-making structures of these bodies. The Scottish Government and public authorities should involve Deaf and disabled people in scrutinising budget processes (human rights budgeting).

## Annex: Question Time Panel discussion

The panel discussion was chaired by Stephen Naysmith, Social Affairs correspondent at *The Herald* newspaper. The panel was made up of people who attended the UN Committee review and contributed to the evidence provided to the UN Committee. These individuals were:

- Sally Witcher, Inclusion Scotland
- Steven Robertson, People First Scotland
- Cathy Asante, Scottish Human Rights Commission
- Laura Hutchison, Equality and Human Rights Commission.

The Scottish Government Minister for Social Security, Jeane Freeman MSP, was invited. However, she was unable to attend or send a representative. Ms. Freeman advised that she was looking forward to hearing the outcome of the conference. John McArdle from the Black Triangle Campaign had also planned to take part in the panel, but was unable to attend on the day.

**Question 1: “How do those on the panel who attended the UN Committee's first review of disability rights in the UK think we can enforce each recommendation for the whole of the UK and specifically Scotland? How do we make sure the recommendations are followed through each stage of development and are implemented, enforced, engrained and upheld by the laws governing the whole of the UK and that of Scotland?”**

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Sally Witcher stated that the UK and Scottish Governments had very different approaches to human rights. In Scotland, the challenge is to translate the Government's engagement into action with resources. Sally explained that the UK Government rejected the findings of the UN

Committee's inquiry into the devastating effects of austerity and persist in claiming that they are global leaders on human rights for disabled people. This is a real problem. However, one positive aspect of the work around the CRPD is that Deaf and disabled people's organisations have continued to work together, forming a proper coalition and continuing to lobby together.

Steven Robertson stated that we need something to measure how far delivery has moved on, or how far Scottish policy and law complies with the CRPD. The Scottish Government cannot decide what progress has been made without the consistent involvement of disabled people and their organisations.

### **Question 2: "How can we tackle intersectional discrimination at grassroots level?"**

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Sally asked how much we actually know about what intersectional discrimination is. One challenge is the ability of people with different characteristics to get involved in activities designed to help Deaf and disabled people access their human rights. One way forward could be for Deaf and disabled people to make links with women's organisations, LGBT organisations and older people's organisations. Sally said, "I don't think that any of us would claim to be fully inclusive yet, and I do think it's a huge area we need to be focusing on and working on at all levels, local and national."

Steven said that someone with a learning disability might be a woman, might be from an ethnic minority group, might be a member of the Deaf community, or fit with any other equality characteristic, but the greatest discrimination is likely to be because of their learning disability. He said, "In Scottish society, we are still offered a much lower value than other citizens. We are segregated still. We remain excluded from mainstream education, training, and employment. Within health, our life expectancy is far lower than for others. There have been numerous reports which

describe deaths that could have been avoided or treatments that were denied with learning disability being the significant factor."

Laura talked about the gaps in protection from discrimination under the Equality Act, including a provision that hasn't been introduced but which would provide protection from discrimination because of two characteristics; for example, discrimination due to someone being a disabled woman. The UN Committee recommended that action is taken to close these gaps.

From the floor, the point was made that the Equality Act does not appear to be giving disabled people the protection they require. In reply, Judith Robertson, chair of the Scottish Human Rights Commission, stated that people could use provisions in the Equality Act that place a duty on public authorities to 'foster good relations'. This might create opportunities for all sorts of groups with protected characteristics to come together.

**Question 3: "I would like to know the panel's views about what can be done about mental health services in Scotland not upholding people's human rights and discriminatory treatment by staff delivering mental health services."**

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Laura said that a review of mental health services in Scotland found that some people had received excellent support from mental health staff, but others felt they had experienced discrimination and violations of their human rights. There are potential legal remedies under the Equality Act and the Human Rights Act. People can make complaints to the Scottish Public Sector Ombudsman. However, the difficulty with that approach is that the emphasis is on the individual taking action and the process can be very difficult to go through. Organisations delivering mental health services also have obligations not to discriminate and to promote and protect people's human rights. Mental health services must adopt a human rights-based approach to the delivery of mental health services.

The Commissions asked the UN Disability Committee to recommend that the Scottish Government implement a root-and-branch review of the support offered to people with mental health issues.

From the floor, there was a comment that it is shocking that mental health is not funded to the same extent as physical ill health. The Scottish Government states that it has a new mental health strategy, but people cannot find it. People are having important services withdrawn without proper consideration of their rights and needs.

Another audience member reported experiencing psychological abuse while they were an inpatient. When the abuse was reported, they were disbelieved simply because they have a mental health condition. They said, "It's terrible, and it has to change; the sooner the better."

This view was echoed by another audience member who had personal experience of the difficulties accessing assistance for a physical health condition, and stated, "If you have any mental health condition in your medical notes, then your pain is not taken seriously; you're treated as if these things are depression, or attention seeking or something like that."

Cathy Asante said that a human rights approach should underpin all health service provision, not just mental health.

Sally told of her experience of feeling that she was experiencing depression, only for it to be dismissed by a GP as a side effect of her physical impairment. The treatment consisted of the GP trying to bend her knee. While assumptions about an inevitable interplay between physical impairment and mental health conditions may be quite wrong, so too would be assumptions that they are never connected. There is a need for education about this, as well as enforcing rights.

**Question 4: “To what extent has the Scottish Government accepted the four concerns about Scottish education from the UN CRPD and has Scottish Government any plans to take forward the UN CRPD's three recommendations for Scottish education?”**

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Steven explained many pupils and students with a learning disability are excluded from mainstream education, do not get to learn in the same classroom as other children and often don't go to school in their local communities. A recent report by Enable Scotland stated that 98 per cent of the Scottish education workforce feels they are not adequately prepared to teach young people who have learning disabilities. "This says to us that there is still no expectation that pupils and students with a learning disability are offered education." People First Scotland believes that inclusion from preschool will lead to greater acceptance of people with learning disabilities in communities, less harassment of those people, and a greater expectation of their inclusion in all fields of Scottish life.

Stephen Naysmith commented that the UN Committee criticised the UK for having too many disabled and Deaf pupils in special schools. In Scotland, there is a real move towards inclusive schools, but there are significant problems with making that happen effectively.

From the floor, an audience member talked about her experience of being through both special and mainstream schools. There were good and bad sides to both. The important thing is for disabled people to have options and support to make decisions that are appropriate for them.

Laura said that the emphasis in the CRPD is on inclusive education and the Scottish Government needs to take concrete steps to make this a reality. The Commissions also recommended that the Scottish Government proactively monitor if schools are complying with existing legislation that requires disabled pupils can access school buildings and the curriculum.

From the floor, an audience member commented that attainment rates for pupils with additional support needs have been improving over the past five years, but that significant gaps still remain. The UN Committee was clear that the Scottish Government needs an overall strategy to bring about real inclusion in schools.

**Question 5: “How do you think that Scotland and the UK compare with other countries in relation to the governments’ performance on disability rights?”**

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Steven explained how one of the members of the UN Committee, Robert Martin (the only person with a learning disability ever appointed to any UN committee), met with People First Scotland during the Review of the UK to discuss abolishing substitute decision making and replacing it with supported decision making systems. People First Scotland will continue to reject substitute decision making, including proposals for graded guardianship.

Sally explained that it's not easy to get an oversight of how different countries are performing. Last year, Sally was involved in a two-day conference in Cyprus, where the Council of Europe launched its new strategy on human rights for disabled people. Her sense is that the UN CRPD provides a focus and catalyst for action. It is an essential starting point. Countries should learn from each other.

Cathy shared her view that while looking for good practice around the world is worthwhile, she was wary of making comparisons. In Scotland, we should have expectations that are much greater than doing better than the UK Government or other countries. Hopefully, Scotland can set examples for other parts of the world when we do well, but it is important not to be complacent.

**Question 6: “Do you feel that enough attention was paid to the intersections of marginalisation in the research and report; that disabled women are more at risk because of shutdowns of shelters or that disabled people of colour are more likely to be over-policed and have their disability read as threatening, for example?”**

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Laura recalled one member of the UN Committee who asked questions about the disproportionate number of black disabled people who are detained and treated against their will. The UN Committee also recognised that more needs to be done to tackle issues facing disabled people. But Laura was disappointed the UN Committee did not explicitly pick up that important Government strategies on gender and race equality and child poverty don't always reflect the lived experiences of Deaf and disabled people.

Sally felt it was worth pointing out that the UN Committee had around 2,000 pages of evidence to consider. Although they had gone some way to flagging and acknowledging intersectional discrimination, Sally believed there is more to be done.

**Question 7: “People with learning disabilities are often detained or restricted in a way that would be called deprivation of liberty for anyone else. For us, if they appoint a guardian who consents on our behalf, suddenly it can't be called a deprivation of liberty any more. We think this measure is about protecting the State and the system and not about protecting the individual with learning disabilities who is still just as restricted as before. What does the panel think about this?”**

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Cathy thought this was a very valid point. The systems around deprivation of liberty have been driven largely by the legal requirements.

Cathy believes we need to look at not just being detained, but if people are in a place that is right for them. Are they receiving the support they

need? Are their rights being respected? The starting point for all of this has to be supported decision making that allows people to make choices long before they ever get into situations where they are being deprived of their liberty. There still needs to be law to check all of that is doing done properly but the focus should be on the individual, not the system.

**Question 8: “The way that social work assessments are done and the way the funding is managed means it’s really hard for parents with learning disabilities to look after their children. Children are still being taken away from their parents because of the learning disability instead of getting support to look after them. Does the panel agree that this is not in line with the UN committee recommendations on Article 22?”**

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Laura explained that removing children because their parents are disabled goes against Article 22, which is about respect for privacy. It also goes against Article 23, which is about respect for the home and family. The UN Committee recommended that the UK and devolved governments make sure disabled parents get the support they need to look after their children. Disability is not a reason to remove children from their families. Article 4 places a positive obligation on governments to adopt laws, practices and policies to implement CRPD. They must also not contravene CRPD rights. Laura suggested asking the Scottish Government what steps it is taking to support disabled parents to look after their children and to check that social work assessments and funding pressures are not barriers to Deaf and disabled parents receiving the support they need.

**Question 9: “Currently, when it comes to Self-Directed Support (SDS), there is little or token involvement in planning, consultation or any kind of co-production with local disabled people – and no consideration of the impact of policies developed locally. In light of this, what does the panel think Health and Social Care Partnerships and Integrated Joint Boards need do to make sure that an equality and human rights based approach is taken to the implementation of SDS legislation?”**

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Sally said she believed the short answer was for integration authorities to implement the law. There is a lot of evidence that engagement was not happening properly. SDS is being implemented patchily and the focus of integration seems to be overwhelmingly on healthcare, rather than social care. The authorities need to be working with disabled people's organisations and recognise the value they can contribute. There really is no excuse. "Self-Directed Support, and people having choice of control over the services they get, is of fundamental importance to very many disabled people when it comes to them exercising a whole range of human rights, because it is about having choice of control over your life." Sally said we need to refocus integration on social care support and SDS. We have to use the media to highlight the impact on disabled people's lives, because social care is in crisis.

Cathy said she believed SDS was a “typical disappointing example” of the way human rights work is done in Scotland. It is a great policy with transformative potential, grounded in human rights aims, but it is not working in practice. Part of what is missing is accountability. There is a lack of support for people to challenge what's not working. Even though local authorities are the ones who are charged with putting these things in place, this is a national policy, and the Scottish Government should take responsibility for dealing with the problems around it.

From the floor, someone said that the implementation seems to be better in the central belt of Scotland than in some other areas. Another

person commented that the biggest problem in his area is trying to get disabled people onto integration boards. People are getting tired of going along to drop-in events, where they are basically told what is going to happen by professionals.

**Question 10: “There are new kinds of learning disability services such as Assessment and Treatment Units, specialist hospitals and private hospitals. There are also more group living arrangements for people with learning disabilities. Does the panel agree that these things are bringing back institutional living for us, and are preventing us getting independent living?”**

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Cathy said the right to independent living is about being able to live where you want, with whom you want and with the support you need to do that. If people feel that's not happening, then they're not enjoying that right. Cathy said there is an aspect of some of these services that is about providing healthcare. Any of us may need healthcare or support at some point in time. However, when people end up living in these types of places under all sorts of restrictions that does look like institutionalisation.

Cathy said the Commissions told the UN Committee about the disproportionate amount of people with learning disabilities, in particular, who have long stays in what are supposed to be hospital treatment environments. Tackling this problem comes back to the fundamental principle of the CRPD – involving disabled people in decisions that will affect them.

**Question 11: “Are the calls for the abolition of substituted decision making (Article 12) and the repeal of laws authorising deprivation of liberty and non-consensual treatment (Article 14) compatible with the continued existence of the Mental Health Tribunal? What role would the Mental Health Tribunal have if these recommendations were implemented?”**

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Cathy explained that she had been thinking about supported decision making for a while, but had not thought about this particular aspect. She pointed out that the CRPD expects us to move to a system built around support for decision making. What might a Mental Health Tribunal look like in that scenario? The Tribunal has a role in checking the decisions made by professionals and that is an important protection. Perhaps the Tribunal could also look at whether these professionals have done everything they need to do to support people to make decisions. That would be quite radically different from the way that the Tribunal operates at the moment.

**Question 12: “I understand that all members of the panel contributed to the writing of either the Independent Mechanism’s alternative report or disabled people’s alternative report and attended the UN Committee’s review in Geneva. In your view, did the UN Committee take into account the information in these reports during the review? If they did, can you explain how you think this information and people from Scotland being at the review influenced the Committee’s conclusions about the UK and Scotland?”**

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Steven said People First Scotland members felt it was very important to contribute to the report. At times, it felt frustrating that there was a strict word limit and there was a worry that their points might not come over strongly enough. The opportunity to go to Geneva and to meet with UN

Committee members was very significant and he thought disabled people had directly influenced the questions asked of government. Steven said, "We hope this reflects the influence we have had. The chair met with our delegation and offered genuine thanks for the effort we made to meet with her and her colleagues at that time."

Sally commented that if the UN Committee had 2,000 pages of evidence sent to them that would be a challenge for anybody. She believed disabled people meeting the rapporteur and chair of the UN Committee had been very influential. It was clear on every page of the UN Committee report that they believed the groups representing disabled people. She said, "It was a fascinating process; exhausting, but incredibly interesting."