

# Disability rights in Northern Ireland

Supplementary submission to  
inform the CRPD List of  
Issues on the UK



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# Executive summary

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

## Purpose

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The information summarised in this working paper is being used to inform and complement the UKIM ‘List of Issues’ submission to the UN Committee on the Rights of Persons with Disabilities.

We hope that publication of this paper, containing NI specific detail, will provide a further resource for UNCRPD Committee members, raise awareness of key issues in NI and drive action by Government and others to address identified shortfalls, thereby advancing the full implementation of the UNCRPD in NI.

## Development

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Our working assessment of key issues is based on extensive engagement with key stakeholders and, in particular, disabled people and Disabled People’s Organisations (DPOs). Our assessment is also based on our engagement with Government and our analyses of the UK Initial State Party Report, the NI Executive contribution to the UK State Party Report and the NI Disability Strategy.

## Summary of Key Gaps in the implementation of the UNCRPD in NI

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The Independent Mechanism for Northern Ireland (IMNI) Jurisdictional 'Parallel' Report<sup>1</sup> provides a wide-ranging overview of the implementation of the UNCRPD in NI and draws attention, in particular, to key gaps aligned to the following UNCRPD articles:

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

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

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<sup>1</sup> Independent Mechanism for Northern Ireland (July 2014): 'United Nations Convention on the Rights of Persons with Disabilities – Jurisdictional 'Parallel' Report on Implementation in Northern Ireland'. Available at: <http://www.equalityni.org/uncrpd>.

# Disability rights in Northern Ireland: Supplementary submission to inform the CRPD List of Issues on the UK

## Enhancing the status of CRPD in domestic law (Articles 3, 4)

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The NI Executive 'Strategy to Improve the Lives of People with Disabilities 2012 – 15' was extended to March 2017.<sup>2</sup> The Strategy has been criticised for failure to deliver for persons with disabilities.<sup>3</sup>

**We recommend that the CRPD Committee asks:**

- 1. When will a revised strategy to ensure implementation of the articles of the UNCRPD in NI be published?**

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<sup>2</sup> NI Executive, 'A Strategy to improve the lives of people with disabilities 2012-2015' Annual Report, June 2015.

<sup>3</sup> Proposed structures to oversee implementation of the Strategy have not been put in place. Disability Strategy: Update. Oral Answers to Questions — Office of the First Minister and deputy First Minister – in the NI Assembly at 2:00 pm on 7th December 2015. <http://www.theyworkforyou.com/ni/?id=2015-12-07.4.7>. A new strategy is under consideration and the NIHRC has emphasised the need for a robust strategy framed around the UNCRPD with provision for the participation of persons with disabilities. See further Disability Action 'Briefing Paper: Broken Promises - the NI Disability Strategy'.

## Equality and non-discrimination (Article 5)

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Disability equality legislation in Great Britain has been harmonised and strengthened by the implementation of the Equality Act 2010<sup>4</sup> which does not apply in Northern Ireland, resulting in a lower level of protection for people who are disabled in NI than is available in GB. The ECNI has recommended reform<sup>5</sup> of disability equality legislation in NI.<sup>6</sup>

**We recommend that the CRPD Committee asks:**

- 2. How will the NI Executive address legislative gaps in protection, including gaps that exist between disability equality law in NI and GB, so as to guarantee disabled people in NI effective legal protection against discrimination?**

## Independent and adequate standard of living and social protection (Articles 19, 20, 26, 28)

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In 2015 the NI Executive announced that the Independent Living Fund<sup>7</sup> (ILF) would be closed to new applicants.<sup>8</sup>

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<sup>4</sup> The Equality Act 2010 brings together equality legislation across a range of equality grounds which forms the basis of anti-discrimination law in Great Britain, including the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 and three statutory instruments protecting against discrimination in employment on grounds of religion or belief, [sexual orientation](#) and [age](#). The Act simplifies, harmonises and strengthens equality legislation in Great Britain and provides a range of additional protections for disabled people, the definition of disability was amended to make it easier for disabled people to fall within the definition of disability; and increased protection for disabled people against harassment when accessing goods and services were introduced.

Available at: [http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga\\_20100015\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf)

Under s.217, with limited exceptions, the Act does not apply to [NI](#) (see:

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

<sup>5</sup> See: <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/Law-reform/Research-investigations>

<sup>6</sup> These include remedies against perceived and associative discrimination and indirect discrimination.

<sup>7</sup> The Independent Living Fund (ILF) was an Executive Non-Departmental Public Body of the UK Department for Work and Pensions. In NI the ILF budget was devolved to the Department for Social Development (DSD) but the administration was still done on a UK wide basis.

In Great Britain administration of the Independent Living Fund (ILF) has been devolved to Local Authorities in England and the Devolved Administrations from 1 July 2015.

<sup>8</sup> The Minister announced that administration of the ILF would be henceforth be undertaken by the Scottish Government. Source: Written statement to the Assembly by Health Minister Simon Hamilton MLA (19 May 2015): 'New arrangements for the future support of Independent Living Fund users in NI'. Available at:

<https://www.health-ni.gov.uk/publications/dhssps-ministerial-announcements-and-statements-2015>

However, whilst the ILF is open to new users in Scotland, its operation NI is restricted to existing users only (Source: Welfare Weekly (20 May 2015): 'NI Independent Living Fund To Be Administered In Scotland'.

Available at: <http://www.welfareweekly.com/northern-ireland-independent-living-fund-to-be-administered-in-scotland/>) consequently leading to the eventual de facto closure of the ILF in NI.

**We recommend that the CRPD Committee asks:**

**3. How have the NI Executive ensured that the closure of the Independent Living Fund to new applications will not result in a gap in the provision of health and social care services for persons with disabilities?**

Research commissioned by IMNI has identified gaps around the maintenance of assistive devices, including the failure to repair or replace devices in a timely manner.<sup>9</sup>

**We recommend that the CRPD Committee asks:**

**4. What steps have been taken to ensure the timely repair or replacement of defective assistive devices in NI?**

**Social Security Reform**

The NI (Welfare Reform) Act 2015<sup>10</sup>, will significantly reform the social security system.<sup>11</sup> There are a higher proportion of people with disabilities living in NI compared to other parts of the UK.<sup>12</sup> A number of mitigation measures have been provided for. However these are temporary.<sup>13</sup> In October 2016 the UNCRPD Committee published a report into social

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<sup>9</sup> Byrne, B., Harper, C., Russell, H., Shea-Irvine, R. and Fitzpatrick, B. (2014): 'UNCRPD: Shortfalls in public policy and programme delivery in NI relative to the Articles of the UNCRPD', page 111. Available at: <http://www.equalityni.org/uncrpd>

<sup>10</sup> See: <http://services.parliament.uk/bills/2015-16/northernirelandwelfare-reform.html>

The proposed welfare reform measures are broadly similar to the measures passed into law in GB. For further information, see: <http://www.niassembly.gov.uk/Assembly-Business/Legislation/Primary-Legislation-Current-Bills/Welfare-Reform-Bill/>

<sup>11</sup> NI Assembly (2011): 'An introduction to Welfare Reform', Research and Library Service Briefing Paper, paper 13/11, NIAR 606-10. Available at:

<http://www.niassembly.gov.uk/Documents/RalSe/Publications/2011/Social-Development/1311.pdf>.

<sup>12</sup> Beatty, C. and Fothergill, S. (2013): 'The Impact of Welfare Reform in NI' (Centre for Regional Economic and Social Research at Sheffield Hallam University for NI Council for Voluntary Action). Available at:

<http://www.nicva.org/resource/impact-welfare-reform-northern-ireland>

Just over 1 in 10 of the population in NI is in receipt of Disability Living Allowance compared to just over 1 in 20 of the population in Great Britain (Source: Department for Social Development (April 2013): 'Welfare Reform Briefing Section 75 Update', page 55, final paragraph, (Belfast: DSD). Available at:

<http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2013/DSDwelfare-reform-bill-section-75-update-april-2013.pdf>.

Over 10% of the working age population in NI is claiming Incapacity Benefit (IB) or Employment Support Allowance (ESA) compared to 6.6% in Great Britain (GB)(Source: MacInnes, T., Aldridge, H., Parekh, A. and Kenway, P. (2012): 'Monitoring Poverty and Social Inclusion in NI', (York: Joseph Rowntree Foundation). Available at: [http://www.jrf.org.uk/topic/monitoring\\_poverty](http://www.jrf.org.uk/topic/monitoring_poverty)).

<sup>13</sup> Although a number of welfare reform 'flexibilities' specific to NI agreed by the NI Executive, as part of the 'Fresh Start' Agreement and a mitigation strategy was also agreed, a number of the key mitigations for persons with disabilities are limited to one year in duration. Including the housing element of Universal Credit (UC) to be paid to the landlord rather than the tenant; claimants to receive fortnightly rather than monthly payments of UC; and payment of UC for joint claims can be split rather than paid into a single back account. NI Executive (14 November 2015): 'A Fresh Start: The Stormont Agreement and Implementation Plan'. Available at: <https://www.northernireland.gov.uk/publications/fresh-start-stormont-agreement-and->



security reform reporting that it had found evidence ‘indicating grave or systematic violations by a State Party’<sup>14</sup> of rights contained in UNCRPD. Whilst the UK Government provided comments on the report upon its publication, the NI Executive has not brought forward measures to address the Committee’s recommendations contained within its Report.<sup>15</sup>

**We recommend that the CRPD Committee asks:**

**5. How does the NI Executive intend to address the Committee’s recommendations contained within the Inquiry Report?**

## Employment (Article 27)

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### Employment gap

Recently published statistics show that almost one in five persons of working age (18 per cent) in NI have a disability.<sup>16</sup> There are concerns that the NI Employment Strategy for People with Disabilities is not properly resourced.<sup>17</sup> A particular concern is that the supported employment sector, which has been primarily funded via the European Social Fund, may be at risk following Brexit.

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[implementation-plan-0](https://www.executiveoffice-ni.gov.uk/publications/welfare-reform-mitigations-working-group-report) ; Welfare Reform Mitigations Working Group Report (January 2016). Available at: <https://www.executiveoffice-ni.gov.uk/publications/welfare-reform-mitigations-working-group-report>

The package of mitigation measures proposed by the Working Group and agreed by the NI Executive includes: supplementary payments for those who will be adversely affected by the reforms such as carers, claimants with disabilities and ill health, households affected by the Benefit Cap and changes to tax credits, those affected by the new sanctions regime; a Discretionary Support Scheme to replace the Social Fund; and financial support for the independent advice sector in order to assist people through the change process.

<sup>14</sup> Article 6, Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.

<sup>15</sup> United Kingdom Government Response to the Report by the United Nations Committee on the Rights of Persons with Disabilities under article 6 of the Optional Protocol to the Convention, CRPD/C/R.3, para. 1, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/InquiryProcedure.aspx> ('UK report').

<sup>16</sup> NI Statistics and Research Agency (31 August 2016): 'Quarterly Supplement to the Labour Market Report: April – June 2016', page 2. Available at: <https://www.economy-ni.gov.uk/sites/default/files/publications/deti/Quarterly%20Supplement%20to%20the%20Labour%20Market%20Report%20-%20Oct-Dec%202015.PDF> People without a disability were more than twice as likely to be in employment (78 per cent) than those with a disability (33 per cent) , mirroring a similar ratio in relation to those without educational qualifications.

<sup>17</sup> DEL (March 2016): [Supporting Equality Through Inclusive Employment: An Employment Strategy for People with Disabilities](#). An Action Plan forms part of the strategy, which will put in place the foundations and infrastructure for the five-year strategy. One of the actions in year one is the establishment of a Disability Employment Stakeholder Forum which will have responsibility to agree actions plans for subsequent years. The Forum will be comprised of senior officials from a number of key government departments, along with select employers or employer groups; people with disabilities, and representatives from the local disability sector.

**We recommend that the CRPD Committee asks:**

- 6. How does the NI Executive ensure mechanisms in place to support persons with disabilities into employment are effective?**
- 7. How will the impact of Brexit on the Supported Employment sector be mitigated?**

**Accessible Childcare**

ECNI has identified that the lack of accessible childcare is a particular issue for parents of children with a disability.<sup>18</sup>

**We recommend that the CRPD Committee asks:**

- 8. How will the NI Executive ensure that the rights of children with disabilities and parents with disabilities are addressed within a childcare strategy for NI?**

**Strategies aimed at Tackling Poverty**

In 2015 the High Court in NI ruled that the NI Executive had failed to adopt an identifiable anti-poverty strategy based on objective need, to meet its obligations under Section 28E of the NI Act 1998.<sup>19</sup> The NI Executive has committed to addressing this judgement within the Programme for Government<sup>20</sup>.

**Child Poverty**

Research suggests that 57% of disabled children in NI are living in poverty compared to 37% of children without disabilities. A revised NI Child Poverty Strategy and Child Poverty Strategy Annual report for 2014/15 were both published in March 2016.<sup>21</sup>

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<sup>18</sup> ECNI (2013): 'Childcare – Maximising the Economic Participation of Women', page 43. Available at: <http://www.equalityni.org/Publications?subject=Gender&type=&year=2013> Unlike the rest of the UK, NI does not have a childcare strategy and there is no statutory duty on public authorities to ensure adequate childcare.

<sup>19</sup> Joseph Rowntree Foundation Monitoring Poverty and Social Exclusion in NI 2016 (March 2016). The JRF noted in its 2016 report that thinking around poverty in NI is dominated by one short term development (the Welfare Reform Mitigations Package) and one longer term development (the Executive must now develop an anti-poverty strategy). The JRF concluded that the strategy needs to face up to the potential problems caused by welfare reform as well as the changing composition of the poverty landscape, where there are more young people, private renters and working families in low income. Available at: [https://www.jrf.org.uk/report/monitoring-poverty-and-social-exclusion-northern-ireland-2016?utm\\_content=buffer5e7d6&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://www.jrf.org.uk/report/monitoring-poverty-and-social-exclusion-northern-ireland-2016?utm_content=buffer5e7d6&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

<sup>20</sup> The NI Executive (2016): 'Draft Programme for Government Framework 2016-21, Indicator 19 'Reduce Poverty' at page 15. Available at: <https://www.northernireland.gov.uk/publications/draft-programme-government-framework-2016-21-0>

<sup>21</sup> NI Executive (25 March 2016): [The Executive's Child Poverty Strategy](#); NI Executive (24 March 2016): [Annual Report on Child Poverty 2014-15](#) The strategy adopts an outcomes based approach and also retains income related measures in order to measure poverty in NI.

## **We recommend that the CRPD Committee asks:**

### **9. How will the NI Executive:**

- **prioritise the rights of persons with disabilities within the anti-poverty strategy based on objective need in NI;**
- **ensure the Child Poverty Strategy reduces the number of children with a disability in poverty?**

## **Access to justice (Articles 13, 12)**

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The law of evidence in NI makes provision for the use of intermediaries at various stages throughout the criminal justice process.<sup>22</sup> Intermediaries are communication specialists who assist vulnerable victims, witnesses, suspects and defendants with significant communication deficits.<sup>23</sup> Permanent provision to ensure the availability of registered intermediaries has not yet been put in place.<sup>24</sup> Registered intermediaries can also assist prisoners with their rehabilitation.<sup>25</sup>

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<sup>22</sup> Department of Justice (January 2015): Northern Ireland Registered Intermediaries Schemes Pilot Project: Post-project review. Available at: <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/ri-post-project-reviewfeb15.pdf>

The results of a recent review of the registered intermediaries (RI) Scheme found that 'clear evidence that the RI Schemes can give vulnerable people a voice, protection and the access to justice to which they are entitled'. A further pilot of the scheme has been taking place to assess the full potential of the intermediary scheme. The Criminal Evidence (NI) Order 1999 makes provision for the examination of a witness through an intermediary to assist vulnerable witnesses to give their best possible evidence in criminal proceedings. The Witness Charter currently being consulted upon by the Department of Justice includes persons with disabilities among the list of vulnerable witnesses entitled to special protections. The Justice Act (NI) 2011 provides for the examination of a vulnerable defendant through an intermediary so that they can participate effectively in criminal proceedings. Whilst the 1999 Order has been in place for 15 years intermediaries are still not widely available throughout the justice system.

<sup>23</sup> The Royal College of Speech and Language Therapists have reported that 60% of young offenders have speech, language and communication difficulties (RCSLT Submission to Departments of Justice and Health: 'Improving Health within the Criminal Justice System consultation' 2017).

<sup>24</sup> Byrne, B., Harper, C., Russell, H., Shea-Irvine, R. and Fitzpatrick, B. (2014): 'UNCRPD: Shortfalls in public policy and programme delivery in NI relative to the Articles of the UNCRPD', page 111. Available at: <http://www.equalityni.org/uncrpd>

<sup>25</sup> A root and branch review of the prison system in Northern Ireland reported in 2011 that recording of disability amongst prisoners was poor. Whilst a survey of prisoners at HMP Maghaberry, Northern Ireland's largest prison holding in and around 1,700 inmates, found that 1 in 4 prisoners considered themselves to be disabled, official records indicated only 18 prisoners having a disability. Prison Review Team (October 2011): 'Review of the NI Prison Service: 'Conditions, management and oversight of all prisons'', page 38. Available at: [http://cain.ulst.ac.uk/issues/prison/docs/2011-10-24\\_Owers.pdf](http://cain.ulst.ac.uk/issues/prison/docs/2011-10-24_Owers.pdf).

**We recommend that the CRPD Committee asks:**

**10. How will the NI Executive ensure the availability of intermediaries for witnesses, defendants and victims throughout the justice system?**

**Equal Treatment Benchbook**

In the case of Galo the Court of Appeal found that the Industrial Tribunal failed to make reasonable adjustments for a person with a disability and that the applicant did not receive a fair procedural hearing. The Court in particular noted that the Tribunal did not have regard to the Equal Treatment Bench Book (ETBB), which inter alia sets out adjustments to court or trial procedures which may be required to accommodate the needs of persons with disabilities.<sup>26</sup>

**We recommend that the CRPD Committee asks:**

**11. How will the NI Executive ensure courts and Tribunals ensure access to justice for persons with disabilities?**

**Support for parents**

Concern has been expressed regarding the adequacy of support provided to parents with disabilities and parents with a disabled child, including the provision of respite care<sup>27</sup>.

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<sup>26</sup> Galo –v- Bombardier Aerospace UK [2016] NICA 25. Mr Galo has Asberger’s Syndrome. The Equal Treatment Bench Book (ETBB), which was published by the Judicial College in England & Wales, ‘...it a matter of great concern that no reference appears to have been made to the ETBB (the Equal Treatment Bench Book)’.

<sup>27</sup> Byrne, B., et al (2014): ‘Shortfalls in public policy and programme delivery in NI relative to the Articles of the UNCRPD, pages 118-119, (Belfast: Equality Commission NI). Available at:

<http://www.equalityni.org/Delivering-Equality/Addressing-inequality/UNCRPD-Disability>

In May 2016 the Western Health and Social Services Trust acknowledged a hitherto hidden £8 million deficit in investment in learning disability services, including funds for respite care, amid widespread disquiet among stakeholders. BBC News (11 May 2016): ‘Western Trust: McGuinness calls for investigation into disability funding’.

Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-foyle-west-36264092>; Strabane Chronicle (6 June 2016): ‘Meeting to address learning disability under-funding’. Available at:

<http://strabanechronicle.com/2016/06/meeting-to-address-learning-disability-under-funding/>; Tyrone

Constitution (12 May 2016): ‘Hussey ‘disgusted’ at £8m deficit in Western Trust disability services’. Available at: <http://www.tyronecon.co.uk/articles/news/52381/hussey-disgusted-at-8m-deficit-in-western-trust-disability-services/>;

Ulster Herald (14 May 2016): ‘Anger at £8m underspend on disability services’. Available at:

<http://ulsterherald.com/2016/05/14/anger-at-8-million-underspend-on-disability-services/>

**We recommend that the CRPD Committee asks:**

**12. What measures have been taken to ensure that parents with disabilities and parents with a disabled child in NI have adequate support, including the provision of respite care, to enable them to successfully raise children to fulfil their full potential?**

**Special Educational Needs and Disability**

Concerns have been expressed that the outworking of the Special Education Needs Act (NI) 2016<sup>28</sup> will result, in practice, in a regression in terms of the numbers of children with special needs who are supported, in the level of support provided and with respect to the robustness and timeliness of assessments.<sup>29</sup>

**We recommend that the CRPD Committee asks:**

**13. How will the NI Executive ensure that the implementation of the Special Educational Needs Act 2016 does not result in a regression of rights?**

Concern continues to be expressed at the quality of educational experiences received by children with disabilities in NI.<sup>30</sup> Research has suggested that the process of transition from

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<sup>28</sup> Available at: <http://www.legislation.gov.uk/nia/2016/8/section/11/prospective>

Section 13 of the Act empowers the Department to pilot the provision of appeal rights for children under compulsory school age. However, there is no obligation to actually conduct a pilot and the Department has ten years in which to conduct the pilot. NI Assembly: Report of Committee for Education Report on the Special Educational Needs and Disability Bill NIA 271/11-16 Committee for Education, 11 November 2015, para 51.

<sup>29</sup> In addition there are concerns as to whether the revised assessments of children with special needs are sufficiently robust and will be carried out within an expedited timeframe.

<sup>30</sup> Harper, C. et al (2012): 'Disability programmes and policies: How does NI measure up? Monitoring Implementation (of the United Nations Convention on the Rights of Persons with Disabilities in NI)', page 193 (Belfast: Equality Commission NI). Available

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

Issues highlighted include lack of resourcing, planning, training, participation and support.

The NI Commissioner for Children and Young People (2009): 'Children Rights Review 2007/08', page 298.

Available at: <http://www.niccy.org/about-us/news/latest-news/2009/february/17/niccys-childrens-rights-review/>

Save the Children NI and the Children's Law Centre (2008): 'NI NGO Alternative Report Submission to the United Nations Committee on the Rights of the Child for Consideration during the Committee's scrutiny of the UK Government Report'. Available at: <http://www.gub.ac.uk/research-centres/advancing-childrens-rights/Filestore/Fileupload,403612,en.pdf>

The Equality Commission for NI (ECNI) has recommended a number of legislative reforms to improve the rights of disabled pupils. These include a free standing right for disabled people against harassment related to their disability by schools when providing education for disabled pupils in line with protections existing under NI equality law on other equality grounds and in Great Britain under the Equality Act 2010. The Commission also recommends that an additional duty is placed on schools to provide auxiliary aids and services for disabled pupils, where reasonable; in circumstances where a failure to do would put the disabled pupil at a substantial disadvantage compared to non-disabled pupils. See: Equality Commission for NI (March 2012): 'Strengthening Protection for Disabled People Proposals for Reform - Full Report', (Belfast: Equality Commission NI). Available at:

school to further education, training or employment and from child to adult health and social care services is often inadequate.<sup>31</sup>

**We recommend that the CRPD Committee asks:**

**14. What further measures will the NI Executive take to ensure the quality of educational experiences received by children with disabilities in NI and to improve the process of transition?<sup>32</sup>**

## Health (Articles 10, 25)

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### Adequacy of mental health care

Although NI has a 20%-25% higher overall prevalence of mental health problems than in England<sup>33</sup>, investment in mental health services has experienced underfunding.<sup>34</sup> NI has

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[http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Strengthening\\_protection\\_for\\_disabled\\_people0312.pdf](http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Strengthening_protection_for_disabled_people0312.pdf)

There are no specific programmes in place which encourage people with disabilities to train as teachers (Source: Harper, C. et al (2012) Op.Cit., pages 192-193).

<sup>31</sup> Regulation Quality and Improvement Authority (2013): 'A Baseline Assessment and Review of Community Services for Adults with a Learning Disability', page 36 (Belfast: RQIA). Available at: [http://www.rqia.org.uk/publications/rqia\\_reviews.cfm](http://www.rqia.org.uk/publications/rqia_reviews.cfm)

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

<sup>32</sup> (i) secure equality of opportunity for pupils and students with disabilities in NI, including the immediate realisation of reasonable accommodation; and

(ii) set targets to increase participation, completion and attainment rates by students with disabilities in all levels of education and training in NI, including tertiary level education?

(iii) What steps have been taken to promote inclusive education including recruitment of teachers with disabilities?

<sup>33</sup> Friedli, L. & Parsonage, M. (2007): *Mental Health Promotion: Building an Economic Case*. Belfast: NIAMH. Available at:

[http://www.chex.org.uk/media/resources/mental\\_health/Mental%20Health%20Promotion%20-%20Building%20an%20Economic%20Case.pdf](http://www.chex.org.uk/media/resources/mental_health/Mental%20Health%20Promotion%20-%20Building%20an%20Economic%20Case.pdf).

<sup>34</sup> A 2015 report found that, between 2008 and 2014, actual spend on mental health services by Health & Social Care Trusts was around 25% less than had been projected. (Source: Wilson, G., Montgomery, L., Houston, S., Davidson, G., Harper, C. & Faulkner, L. (2015): *Regress? React? Resolve?: An evaluation of mental health service provision in NI*, page 3. Available at:

[http://pure.qub.ac.uk/portal/files/17051927/Regress\\_React\\_Resolve.pdf](http://pure.qub.ac.uk/portal/files/17051927/Regress_React_Resolve.pdf))

This compared unfavourably with other areas of healthcare; for example although funding for primary care increased by 136.2%, mental health services have experienced year on year reductions in funding since 2009 (Source: Commission on Acute Adult Psychiatric Care (June 2016): 'Building on progress: achieving parity for mental health in NI – Final Report', page 64. Available at:

[http://www.rcpsych.ac.uk/pdf/Building\\_on\\_Progress\\_CAAPC\\_Report\\_NI\\_June\\_2016.pdf](http://www.rcpsych.ac.uk/pdf/Building_on_Progress_CAAPC_Report_NI_June_2016.pdf).)

It should be noted that the strategy for addressing mental health issues in NI ended in 2008 and has not been replaced by a new or revised strategy.

had the highest proportional suicide rate in the UK since 2012<sup>35</sup> with a particular preponderance of suicides amongst men<sup>36</sup>.

The Commission for Victims and Survivors report that there are 213,000 people in NI experiencing significant mental health problems as a result of the conflict in the region. The Commission for Victims and Survivors has highlighted that the impact of the conflict on mental health is intergenerational.<sup>37</sup> There were 40,000 individuals injured as a result of the conflict, many of whom have acquired disabilities.<sup>38</sup>

**We recommend that the CRPD Committee asks:**

**15. How will the NI Executive reduce levels of mental ill-health and suicide in NI, in particular amongst members of the public who suffer significant mental health problems as a result of the conflict?**

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<sup>35</sup> In 2014, there were 16.5 suicides per 100,000 population in NI, followed by Scotland (14.5 deaths per 100,000), England (10.3 deaths per 100,000) and Wales (9.2 deaths per 100,000). However the number of suicides in NI decreased from 303 deaths in 2013 to 268 deaths in 2014 (Source: Office of National Statistics [Suicides in the United Kingdom: 2014 Registrations](#)).

In 2015 there were 15,548 deaths registered in NI. Of these, 318 were suicides, an increase from 268 in 2014. Just over three quarters (245) of suicides in 2015 were men. See: <http://www.nisra.gov.uk/demography/default.asp31.htm>

One factor which is broadly accepted to have contributed to the prevalence of mental health problems amongst the general population in NI is the history of violent conflict (Source: Oral Statement by Chief Constable of the PSNI to the NI Affairs Committee of the House of Commons. See Hansard Script 24 January 2012 HC 877-i.; Individuals who experienced a conflict-related traumatic event relating to the “Troubles” are more likely to have a mental illness at some point in their lives (Source: Bamford Centre for Health & Wellbeing at the University of Ulster and the NI Centre for Trauma & Transformation and Compass (2011): ‘Troubled consequences: A report on the mental health impact of the civil conflict in NI’, (Belfast: Commission for Victims and Survivors). Available at: <http://icrt.org.uk/wp-content/uploads/2012/11/2012-Dec-Troubled-Consequences.pdf>)

A revised suicide prevention strategy is currently the subject of a public consultation exercise Department of Health (September 2016): ‘Protect Life 2: a draft strategy for suicide prevention in the north of Ireland’. Available at: <https://www.health-ni.gov.uk/consultations/protect-life-2-strategy-suicide-prevention-north-ireland> In the interim, the Department continued to work to the previous strategy (Source: Official Report of the Committee for Health, Social Services and Public Safety Protect Life Strategy: DHSSPS and Public Health Agency (2 March 2016)).

<sup>36</sup> Males made up 77% of all suicides in NI in 2014. There was a decrease from 229 male deaths in 2013 to 207 deaths in 2014. This corresponds with a decrease in the male suicide rate from 29.3 deaths per 100,000 population in 2013 to 25.9 deaths per 100,000 population in 2014. Female suicides decreased from 74 deaths in 2013 to 61 deaths in 2014 representing an 18% decrease. The suicide rate decreased from 9.1 deaths per 100,000 to 7.4 deaths per 100,000 population (Source: Office of National Statistics [Suicides in the United Kingdom: 2014 Registrations](#)).

<sup>37</sup> Commission for Victims and Survivors NI: Towards A Better Future: The Trans-generational Impact of the Troubles on Mental Health Prepared for the Commission for Victims and Survivors by Ulster University Belfast CVSNI March 2015

<sup>38</sup> Smyth, M. et al (1999): The Cost of the Troubles Study – Final Report, p. 37.

## Accessibility (Articles 9)

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Research commissioned by the Equality Commission for NI has found that 'Disabled people experience barriers to accessing everyday services such as transport. Impediments include both physical and attitudinal barriers.'<sup>39</sup>

**We recommend that the CRPD Committee asks:**

**16. What concrete measures will be taken to ensure accessibility for disabled people in NI and what steps have been taken to remove physical and attitudinal barriers to access?**

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

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### Disability-related hate crime

In 2015/16 there were 128 disability-related hate incidents and 70 hate crimes recorded by the Police Service of NI.<sup>40</sup> However, there is thought to be significant under-reporting.<sup>41</sup>

**We recommend that the CRPD Committee asks:**

**17. What measures has the NI Executive taken to ensure the thorough investigation of all incidents of disability related hate crime?**

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<sup>39</sup> There is little publically available and/or accessible information in relation to the training service provider staff receive, or evaluations of its effectiveness.

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

<sup>40</sup> Police Service for NI (25 August 2016): 'Incidents and crimes with a hate motivation recorded by the police in NI: Quarterly update to 30 June 2016', page 12. Available at: <https://www.psnipolice.uk/inside-psni/Statistics/hate-motivation-statistics/>

<sup>41</sup> The charity MENCAP report that 9 in 10 persons with a learning disability have experienced a hate crime incident or bullying See: <https://www.mencap.org.uk/blog/four-things-you-probably-didnt-know-about-disability-hate-crime>

However, the NGO Leonard Cheshire Disability have highlighted that 'reporting of disability hate crime remains alarmingly low' (Source: BBC News (14 September 2014): 'Campaign to highlight disability hate crime in NI'. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-29182488>)



## Use of Electro-convulsive therapy

The Regulation and Quality Improvement Authority reported that a total of 159 patients received ECT from 1 April 2013 to 31 March 2014<sup>42</sup>. The percentage of persons receiving ECT on a non-voluntary basis was 34%.<sup>43</sup>

**We recommend that the CRPD Committee asks:**

**18. Will the NI Executive set out the circumstances in which the use of Electro-convulsive therapy without consent is permissible in NI?**

## Autonomy and integrity, including restraint (Articles 12, 14, 15, 17)

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### Mental Capacity legislation

The Mental Capacity (NI) Act 2016 received royal assent on 9 May 2016. The Act provides a single legislative framework governing situations where a decision needs to be made in relation to the care, treatment (for a physical or mental illness) or personal welfare of a person aged 16 or over, who lacks capacity to make the decision for themselves. The Act therefore continues to make provision for substitute decision making. An act done or decision made for or on behalf of a person lacking the material capacity must be done or made in their best interests.<sup>44</sup> In assessing an individual's best interests an intervener must have 'special regard' to the person's past and present wishes and feelings, beliefs and values and other factors that he/she would consider he/she were able to do so. The duty to have "special regard" is considered to be a significant advancement upon comparable substitute decision making arrangements.<sup>45</sup> However it is unclear how far such a system will ensure compliance with Article 12 and General Comment 1.<sup>46</sup>

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<sup>42</sup> Compared with 113 in 2012/13.

<sup>43</sup> Regulation and Quality Improvement Authority (November 2014): [Report on the Administration of Electroconvulsive Therapy in NI](#) The report highlighted "that Electro-convulsive therapy is considered an important and necessary form of treatment for some of the most severe psychiatric conditions and is, in many instances a life-saving treatment, particularly for patients with severe depression.

<sup>44</sup> Mental Capacity (NI) Act 2016 section 2.

<sup>45</sup> 1. The decision-maker must not just consider but have special regard to (so far as they are reasonably ascertainable) (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity); (b) the beliefs and values that would be likely to influence his decision if he had capacity; and (c) the other factors that he would be likely to consider if he were able to do so;

2. The decision-maker must, in relation to any act that is being considered, have regard to whether failure to do the act is likely to result in harm to other persons with resulting harm to P.

<sup>46</sup> The Essex Autonomy Project: 'Three Jurisdictions Report: Towards Compliance with CRPD Art. 12 in Capacity/Incapacity Legislation across the UK' June 2015 p. 20-21. A number of academics have highlighted the importance of the reference to 'special regard' within the assessment of best interests under the Act. The Essex Autonomy Project stated:

'it will be crucial to monitor how the Act's pioneering use of the concept of "special regard" is operationalised

The test for capacity laid down within the Act is decision specific, section 3 and states that 'if, at the material time, the person is unable to make a decision for himself or herself about the matter'. It further makes clear that 'it does not matter whether the impairment or disturbance is caused by a disorder or disability or otherwise than by a disorder or disability'. Again the Essex Autonomy Project has highlighted that de-linking incapacity from identified disorder or disability is a 'significant innovation'.<sup>47</sup>

**We recommend that the CRPD Committee asks:**

**19. How does the Mental Capacity (NI) Act 2016 take into account the UNCRPD, Article 12 and the Committee's General Comments?**

The Criminal Justice and Courts Act 2015 which applies to England and Wales provides a free standing offence for a care worker to ill-treat or neglect a person they have the care of.<sup>48</sup> There is no equivalent free standing offence in NI.

**We recommend that the CRPD Committee asks:**

**20. What measures have been taken to effectively address abuses of persons with disabilities in health and social care settings throughout NI?**

**Children in care**

The NIHRC has raised concerns regarding shortcomings in the provisions of the Children (NI) Order 1995 which, inter alia, regulates the care of 2,890 children who are looked after by the Health and Social Care Trusts.<sup>49</sup> Thirteen percent of these children were recorded as

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and adjudicated. Insofar as this concept is applied in form of rebuttable presumption approach, as we shall argue that it can and should be, it will represent an important step forward in the construction of a CRPD-compliant capacity statute. .... Insofar as the principle of special regard is operationalised as a rebuttable presumption approach along the lines recommended above, we believe that it could satisfy the relevant requirements of Art. 12.4'.

<sup>47</sup> Ibid.

<sup>48</sup> Criminal Justice and Courts Act 2015, c. 2. The Commission notes that following a report by the National Advisory Committee on the Safety of Patients in England, the Westminster Parliament passed the Criminal Justice and Courts Act 2015 which at section 21 makes it an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully neglect that individual. In addition section 22 creates a similar corporate offence were a care provider has committed a gross breach of a relevant duty of care. House of Lords Mental Capacity Act 2005: post-legislative scrutiny - Select Committee on the Mental Capacity Act 2005 HL Paper 139.

<sup>49</sup> NIHRC (2014): 'Alternative Care and Children's Rights in NI'. Available at: <http://www.nihrc.org/publications/alternative-care-and-children>

having a disability.<sup>50</sup> The NI Minister of Health has published proposals to reform the Children (NI) Order 1995 and the Adoption (NI) Order 1987.<sup>51</sup>

**We recommend that the CRPD Committee asks:**

**21. What efforts are being made to ensure that children with a disability, including those who are looked after, have equal rights with respect to family life?**

### **Support for carers**

Research has identified that there are many carers in NI who are of advanced years yet still providing caring to their loved ones on a full time basis. Such carers can experience difficulties in; paying for household bills; undertaking educational and employment opportunities and maintaining good mental and physical health<sup>52</sup>.

**We recommend that the CRPD Committee asks:**

**22. What measures have and will be taken to ensure support for carers of persons with disabilities in NI?**

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<sup>50</sup> National Statistics: 'Children's Social Care Statistics for Northern Ireland 2015/16', 13 October 2016.

Available at: <https://www.health-ni.gov.uk/news/publication-%25E2%2580%2598children%25E2%2580%2599s-social-care-statistics-northern-ireland-201415%25E2%2580%2599+&cd=3&hl=en&ct=clnk&gl=uk>

At 31 March 2016, 2,890 children were looked after in Northern Ireland. This was the highest recorded number of looked after children since the introduction of the Children (Northern Ireland) Order 1995, representing 67 children per 10,000 of the child population. The number of looked after children in Northern Ireland has risen by 15% since 2011.

<sup>51</sup> Department of Health: 'Adoption and Children (Northern Ireland) Bill', January 2017. Available at: <https://www.health-ni.gov.uk/consultations/adoption-and-children-northern-ireland-bill>

<sup>52</sup> NIHRC (2014): 'Human Rights of Carers'. Available at: [http://www.nihrc.org/uploads/publications/The\\_Human\\_Rights\\_of\\_Carers.pdf](http://www.nihrc.org/uploads/publications/The_Human_Rights_of_Carers.pdf).

## **Representation in public and political life**

Persons with disabilities continue to be significantly under-represented on the boards of public bodies in NI<sup>53</sup> and in political life.<sup>54</sup> The social security system creates a number of financial disincentives to taking up paid public appointments.<sup>55</sup>

**We recommend that the CRPD Committee asks:**

**23. What further actions to effect the meaningful participation of disabled people in the development of public policy, including addressing any disincentives in the social security system?**

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<sup>53</sup> Information on public appointments during the period 2011-12 indicates that less than 1% of those appointed were disabled (compared with 2% in the previous period). Source: Office of the First and deputy First Minister (2012): 'Public Appointments Annual Report 2011/12', page 16. Available at: <http://www.ofmdfmi.gov.uk/public-appointments-annual-report-2011-2012.pdf>

Persons with disabilities have raised with the NIHRC a concern that remuneration for members of board of public bodies may impact negatively on an individual's social security entitlements which dissuades persons with a disability from applying for such posts.

<sup>54</sup> Byrne, B., Harper, C., Irvine, R.S., Russell, H. and Fitzpatrick, B. (2014): 'Shortfalls in public policy and programme delivery in NI relative to the Articles of the UNCRPD', page 150. Available at: <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/UNCRPD-Disability>

<sup>55</sup> Social Security Advisory Committee Occasional Paper 8 – 'Getting Involved: The Impact of the Benefit System on encouraging the participation of disabled people in public life'. December 2008 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/323870/ssac\\_occasional\\_paper\\_8.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/323870/ssac_occasional_paper_8.pdf)

## Contacts

### **Northern Ireland Human Rights Commission:**

Address: Temple Court, 39 North Street, Belfast, Northern Ireland, BT1 1NA

Telephone: +44 (0) 28 9024 3987

Textphone: +44 (0) 28 9024 9066

Email: [information@nihrc.org](mailto:information@nihrc.org)

### **Equality Commission for Northern Ireland:**

Address: Equality House 7-9 Shaftesbury Square Belfast BT2 7DP

Telephone: 028 90 500 600

Textphone: 028 90 500 589

Email: [information@equalityni.org](mailto:information@equalityni.org)

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Published February 2017