



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

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# **UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration**

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**Twelfth Report of Session 2008–09**

*Report, together with formal minutes and  
written evidence*

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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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### Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Rebecca Neal (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), Emily Gregory and John Porter (Committee Assistants), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

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## Summary

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In January, we published a report on the UN Convention on the Rights of Persons with Disabilities. The UK was closely involved in drawing up the Convention, which consolidates and confirms existing rights relating to disabled people, and was one of the first signatories, in 2006. We welcomed the Government's intention to ratify the Convention but drew attention to proposals for reservations and interpretative declarations. We were concerned that there had been insufficient scrutiny of these proposals, not least because draft texts had not been published, and that the Office for Disability Issues had not robustly challenged Government departments about their proposals.

The Government laid the Convention before Parliament on 3 March, heralding the beginning of the ratification process. Four reservations and one interpretative declaration were proposed. We have criticised the Government for ruling out formal consultation on these proposals and also drawn attention to the limited opportunities for parliamentary scrutiny and control of the ratification of treaties.

We agree that ratification should take priority over potentially lengthy and futile discussions about whether or not to enter reservations but we are concerned that the Government's approach to some of the reservations has been unduly cautious and may detract from the position role the UK has played in relation to the Convention.

We consider that the reservation relating to service in the armed forces is open to challenge as incompatible with the object and purpose of the Convention. It is based on the exemption for the armed forces from the Disability Discrimination Act which we doubt is necessary.

The reservation relating to immigration control is, in our view, too broad and its purpose has not been adequately explained. We recommend that it should be dropped.

We accept that a lack of clarity in the Convention may necessitate a reservation and interpretative declaration in relation to education, but express concern that the scope of both may have sent a confused message to people with disabilities about the purpose and intention of the Government's position. We call on the Government to clarify matters.

We agree that the existing treatment of benefits appointees is incompatible with the requirements of the Convention and therefore necessitates a reservation. We recommend that the Government should consult on how to deal with this issue, without undue delay.

# 1 Introduction

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1. We aim to report on all of the international instruments with significant human rights implications which the UK has signed, before ratification, and to monitor compliance with such instruments after they come into force. On 4 January we published a report on the UN Convention on the Rights of Persons with Disabilities, which the UK signed on 30 March 2007.<sup>1</sup> We welcomed the Government's decision to sign the Convention, which consolidates and confirms existing rights relating to disabled people, and concluded that ratification "will send a strong signal to all people with disabilities in the UK, and abroad, that the Government takes equality and the protection of their human rights seriously".<sup>2</sup>

2. We also called on the Government to sign and ratify the Optional Protocol to the Convention, which establishes a monitoring mechanism for the Convention and provides individuals with a right of individual petition to the Committee on the Rights of Persons with Disabilities, the body of experts appointed to interpret the Convention. We recommended that the Government should sign and ratify the Optional Protocol when ratifying the Convention. The Government signed the Optional Protocol on 26 February. In its reply to our report, the Government said it is now working towards ratification, but have provided no timetable or further details in relation to that work.<sup>3</sup> The recently published Foreign and Commonwealth Office Annual Report on Human Rights 2008 sends a different message, noting that Government departments are considering "whether or not to ratify" the Optional Protocol.<sup>4</sup>

**3. We welcome the Government's decision to sign the Optional Protocol to the Convention and recommend that the Government confirm its proposed timetable for ratification without delay.**

4. Our report was critical of what we saw as a lack of transparency in the Government's progress towards ratification which had "unfortunately alienated disabled people and their organisations".<sup>5</sup> We were particularly concerned that the Government was considering making a significant number of reservations and interpretative declarations on ratification but had decided not to make the draft text of such statements available for scrutiny until the Convention was formally laid before Parliament. We argued that the number of reservations and interpretative declarations being considered "may send a negative impression" to the other parties to the Convention and to disabled people in the UK and that the lack of transparency "undermines the previous role the UK Government has played in championing equality for disabled people and their leading role in negotiating the terms of the [Convention]".<sup>6</sup>

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<sup>1</sup> First Report, 2008-09, *The UN Convention on the Rights of Persons with Disabilities*, HL Paper 9, HC 93 (hereafter *DRC Report*).

<sup>2</sup> *Ibid.*, para 22.

<sup>3</sup> Sixth Report, 2008-09, *The UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09*, HL Paper 46, HC 315 (hereafter *DRC Reply*), para 18.

<sup>4</sup> Cm 7557, FCO, *Annual Report on Human Rights 2008*, 30 March 2009, page 84.

<sup>5</sup> *Ibid.*, para 34.

<sup>6</sup> *Ibid.*, pars 34 and 49.

5. We received the Government's reply to our report on 3 March and published it on 6 March.<sup>7</sup> The Government also laid the Convention before Parliament on 3 March and published an explanatory memorandum setting out the text of its four proposed reservations and single interpretative declaration for the first time.<sup>8</sup>

6. We wrote to the Minister for Disabled People, Jonathan Shaw MP, on 10 March, indicating that we intended to scrutinise the proposed reservations and interpretative declaration and requesting that the Government agree not to ratify the Convention until at least the end of April, to give us time to publish a report. He responded in a letter dated 23 March 2009, noting our intention to produce a further report.<sup>9</sup> We also published a call for evidence on the proposed reservations and interpretative declaration, with a very tight deadline of 23 March. We are grateful to the individuals and organisations who submitted written evidence.

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<sup>7</sup> Sixth Report, 2008-09, *The UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09*, HL Paper 46, HC 315 (hereafter *DRC Reply*).

<sup>8</sup> Cm 7564 .

<sup>9</sup> Letter from Jonathan Shaw MP to the Chair, dated 23 March 2009, page 32, below.

## 2 Progress towards ratification

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7. The Minister told us in oral evidence in November 2008 that the Government aimed to ratify the Convention “in the spring of 2009”.<sup>10</sup> He argued against publishing any the reservations and interpretative declaration in draft because of the need for confidential discussions within Government about the form they would take. He suggested that scrutiny by Parliament and civic society should take place once the Convention had been formally laid before Parliament.<sup>11</sup>

8. We welcomed the spring ratification target but said “we would be extremely disappointed if ratification were to proceed without any further opportunity for consultation and scrutiny by disabled people and their organisations”.<sup>12</sup> We recommended that a 4 to 6 week period for consultation be built into the timetable for ratification, suggesting that this would not put at risk the spring target.<sup>13</sup>

9. In its reply to our report, the Government ruled out formally consulting on the proposed reservations and interpretative declaration because it did not want to hold up ratification.<sup>14</sup> It said:<sup>15</sup>

This does not mean that the Government has not been open to feedback on the proposed reservations or interpretative declaration more generally. Indeed the Government will continue to welcome comments on the basis on which we propose to ratify. As previously stated, the parliamentary processes for ratification provide an opportunity for scrutiny by both Houses, including debate, on the terms of our proposals. The Government will ensure that the information provided to Parliament is disseminated more widely by the Office for Disability Issues, to allow disabled people and their organisations to consider the terms and implications of what we propose. They will be able to make their views known to Departments directly, and to MPs and Peers.

10. The Explanatory Memorandum explains the additional steps that the Government have taken to consult on the Convention:

Subsequently [to the Ministerial statement on 6 May 2008 outlining possible areas for reservation] there have been a number of discussions with disabled people and their organisations, primarily around the possible reservations/declarations. The Government has continued to provide updates on the Convention via two websites: [www.odi.gov.uk](http://www.odi.gov.uk) and [www.direct.gov.uk](http://www.direct.gov.uk). Information is also available on [www.un-convention.info](http://www.un-convention.info) run by an independent advisor to the Government on disability and human rights.

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<sup>10</sup> *DRC Report*, Q1.

<sup>11</sup> *DRC Report*, Qq 13, 17

<sup>12</sup> *DRC Report*, para 50.

<sup>13</sup> *DRC Report*, para 48.

<sup>14</sup> *DRC Reply*, p9.

<sup>15</sup> *DRC Reply*, pp9-10.

11. In its response to the Explanatory Memorandum, the Equality and Human Rights Commission (EHRC) said, however, that:

[P]ublication of the Explanatory Memorandum has provided the first opportunity for the Commission and others to formally comment on the Government's planned reservations and declaration.<sup>16</sup>

The Northern Ireland Human Rights Commission (NIHRC) told us it:

regrets that despite a number of requests that it be consulted as to the plans in respect of ratification, not least because of its designated role under Article 33(2) [as part of the domestic mechanism for monitoring compliance with the Convention], its first opportunity to consider the content of the reservations was upon publication of the Explanatory Memorandum.<sup>17</sup>

12. The Convention places an express duty on State parties to closely consult people with disabilities in respect of changes to law and policy designed to implement the Convention and in respect of other decision making-processes which concern issues which may relate to them.<sup>18</sup> The Office of the UN High Commissioner on Human Rights has recently stressed the value of an open and collaborative approach to ratification of the Convention:

Domestic processes for ratification offer important opportunities for awareness-raising and promoting understanding of the treaty under consideration.<sup>19</sup>

**13. We remain of the view that the Government should have consulted on both the justifications for and the precise terms of the reservations and interpretative declaration it proposes to make to the Convention, either before the Convention was laid before Parliament, or for a specified period after the Convention was laid and before ratification. It is not acceptable for the Government to claim that consultation cannot take place now because of the need to ratify as soon as possible, when the Government delayed its own timetable for ratification in order for departments to agree their positions. Nor can inviting disabled people and organisations to write to the Minister or other parliamentarians be a substitute for a proper consultation on the terms on which the UK will ratify the Convention.**

## Parliamentary involvement in the ratification process

14. The Government's reference to "the parliamentary processes for ratification" deserves fuller scrutiny.

15. Parliament's formal role in relation to the signing and ratification of international treaties is limited. Under the terms of the Ponsonby rule of 1924, "the Government does not usually proceed with [ratification] until a period of 21 [sitting] days has elapsed from

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<sup>16</sup> EHRC, Commission's Statement Concerning the UK Government's Explanatory Memorandum on the UN Convention on the Rights of Persons with Disabilities, 9 March 2009.

<sup>17</sup> Memorandum submitted by NIHRC, page 40, below.

<sup>18</sup> Article 4(3)

<sup>19</sup> Annual Report of the UN High Commissioner for Human Rights, *Thematic Study by the Office of the UN High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities*, 26 January 2009, A/HRC/10/48, para 15.



the date on which the text of ... a treaty was laid before Parliament”.<sup>20</sup> The Government can decide to ratify treaties more quickly than is provided for under the convention. There is no requirement for Parliament to agree that a treaty should be ratified, or even for Parliament to debate the matter.

16. Our predecessor Committee commented in 2004 that there “is no mechanism for reliably scrutinising treaties to establish whether they raise issues which merit debate or reconsideration before they are ratified”. It said this was a “particularly pressing” problem in relation to human rights treaties because “it is now well established that UK courts will have regard to such treaties in a wide range of circumstances”. It decided to scrutinise all treaties which raise human rights issues, prior to ratification, a practice we have continued.<sup>21</sup> The Government welcomed this decision and has recently begun to facilitate our scrutiny of treaties by sending us copies of treaties which raise human rights issues, and the associated explanatory memoranda.<sup>22</sup>

17. The Government published draft proposals for enhancing parliamentary scrutiny of treaties in October 2007, including putting the Ponsonby rule on a statutory footing.<sup>23</sup> These were fully scrutinised by the Joint Committee on the Draft Constitutional Renewal Bill, which called for the establishment of a Joint Committee on Treaties, to “support existing select committees in the scrutiny of treaties”, for example by identifying treaties which raise significant issues and assessing when an extension to the 21-day period under the Ponsonby rule was necessary.<sup>24</sup> The Government has yet to introduce its Constitutional Renewal Bill, but has committed to doing so during the current parliamentary session.<sup>25</sup>

**18. We again draw attention to the limited extent to which Parliament can scrutinise Government proposals to ratify treaties. We call on the Government to bring forward its proposals for enhancing parliamentary scrutiny of treaties as soon as possible, whether in the Constitutional Renewal Bill, or otherwise.**

19. The formal period for parliamentary scrutiny of the Convention expires on 1 April 2009, 21 sitting days after the Convention was laid before Parliament. Because the Convention is also being ratified by the European Union, however, the Government is required to make an Order in Council specifying that the Convention is a Community Treaty under section 1(3) of the European Communities Act 1972. This instrument is subject to approval by both Houses, which will provide an opportunity for the Convention to be debated in Parliament.<sup>26</sup> **While we welcome the fact that there will be debates in both Houses on the Convention, this will only happen because the Convention is to be ratified by the EU and the Commons debate is likely to take place in a Delegated**

<sup>20</sup> Erskine May, *Parliamentary Practice*, Twenty-third Edition, page 264. For more information see Procedure Committee, Second Report, 1999-2000, *Parliamentary Scrutiny of Treaties*, HC 210.

<sup>21</sup> First Report, 2004-05, *Protocol No. 14 to the European Convention on Human Rights*, HL-Paper 8, HC 106, paras 5-7.

<sup>22</sup> Eighth Report of 2005-06, *Government Responses to Reports from the Committee in the last Parliament*, HL Paper 104, HC 850, pp20-21. See also forthcoming Thirteenth Report of 2008-09, *Prisoner Transfer Treaty with Libya*, HL Paer 71, HC 398

<sup>23</sup> *The Governance of Britain: War powers and treaties: limiting Executive powers*, Cm 7239.

<sup>24</sup> *Report of the Joint Committee on the Draft Constitutional Renewal Bill*, 2007-08, HL Paper 166-I, HC 551-I, para 238.

<sup>25</sup> HL Deb, 16 Mar 2009, Col 2 (Lord West)

<sup>26</sup> Draft, The European Communities (Definition of Treaties) (UN Convention on the Rights of Persons with Disabilities) Order 2009. DRC Reply, p9.

**Legislation Committee. This is a further illustration of the lack of parliamentary control over treaties entered into by the UK. We recommend that the Government make time for a full debate on the Convention in both Houses.**

20. In oral evidence, the Minister told us that the UK did not have to wait until the EU had ratified the Convention before ratifying itself.<sup>27</sup> The Government reply to our report suggested, however, that it would be “necessary” to specify the Convention as a Community Treaty prior to UK ratification. If this is the case, UK ratification may have to wait until the EU Committees in both Houses have scrutinised the proposal for EU ratification and discharged their scrutiny reserves. **The Government should clarify whether specifying the Convention as a Community Treaty is a necessary step to UK ratification and how this will affect the UK’s timetable for ratification, particularly if the scrutiny reserves of Parliament’s EU Committees are engaged.**<sup>28</sup>

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<sup>27</sup> *DRC Report*, Q49.

<sup>28</sup> The ‘scrutiny reserve’ refers to resolutions of both Houses which constrain Ministers from giving agreement to the Council of Ministers to EU legislative and policy measures. See Erskine May, *Parliamentary Practice*, Twenty-third Edition, pp 946-48.

### 3 Reservations and interpretative declaration

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21. In our last report, we concluded that the proposal that the UK make at least the same number of reservations to the Convention as all 43 existing State Parties combined was extremely worrying.<sup>29</sup> Although we had inadequate information to reach a firm conclusion on the necessity of the reservations being considered by the Government, we had doubts about the necessity of each of the reservations or declarations being considered and their compatibility with the object and purpose of the Convention.<sup>30</sup>

22. We called on the Government to publish the draft text of its proposals for reservations or declarations, together with an explanation of its view that its proposals were compatible with the object and purpose of the Convention, and therefore permitted as reservations. We have commented on the Government's refusal to conduct a consultation on the draft reservations, above. The Government's opinion is that the Explanatory Memorandum provides reasons to support the Government's view that each reservation is necessary and compatible with the object and purpose of the Convention.<sup>31</sup> **We are satisfied that the Explanatory Memorandum sets out the Government's view (that its proposals for reservation are necessary), subject to a notable exception which we consider below. While we may disagree with them, the Government's views are clearly discernible from the contents of the Explanatory Memorandum. We regret, however, that the Explanatory Memorandum provides no explanation of the Government's view that its proposals for reservations and an interpretative declaration are compatible with the object and purpose of the Convention.**

23. We bear in mind that reservations to international human rights treaties are generally scrutinised closely by international monitoring bodies, given that the expression of rights in human rights conventions are obligations owed by States directly to individuals within their jurisdiction, not to other States.<sup>32</sup> For example, in guidance on reservations compatible with the object and purpose of the International Covenant on Civil and Political Rights (ICCPR), the UN High Commissioner for Human Rights explained:

In an instrument which articulates very many civil and political rights, each of the many articles, and indeed their interplay, secures the objectives of the Covenant. The object and purpose of the Covenant is to create legally binding standards for human rights by defining civil and political rights and placing them in a framework of obligations which are legally binding for those States which ratify...Although treaties that are mere exchanges of obligations between States allow them to reserve *inter se* application of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. Accordingly,

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<sup>29</sup> *DRC Report*, paras 52.

<sup>30</sup> *Ibid*, para 90.

<sup>31</sup> *DRC Reply*, paras 12 – 14.

<sup>32</sup> See for example, *Effect of Reservations on Entry into force of the American Convention* (Articles 74 and 75), Inter-American Court of Human Rights, 67 ILR (1982) 558; *Belilos v Switzerland*, (1998) 10 EHRR 466, paragraphs 47- 60; Office of the High Commissioner, General Comment No 24, Issues relating to reservations made upon ratification or accession, 4 November 1994, CCPR/C/21/Rev.1/Add.6

provisions in the Covenant that represent customary international law...may not be the subject of reservations.

[...]

Equally, a reservation to the obligation to respect and ensure rights and to do so on a non-discriminatory basis...would not be acceptable. Nor may a State reserve an entitlement not to take the necessary steps at a domestic level to give effect to the rights of the Covenant.<sup>33</sup>

24. The UN High Commissioner for Human Rights recently reiterated this approach and highlighted that the Committee on the Rights of Persons with Disabilities will address any reservations or declarations lodged by States in their periodic review of State reports under the Convention. She has urged States to be aware that similar monitoring bodies have consistently expressed the view that reservations “diminish the scope of protection afforded by [human rights] treaties”.<sup>34</sup>

25. International monitoring bodies, such as the new Committee on the Rights of Persons with Disabilities will scrutinise reservations closely and will be quick to call for their removal if they appear to be inconsistent with the object and purpose of the Convention.

**26. We welcome the Government’s view that the UK should not accede to any treaty unless domestic law and practice are capable of complying with its obligations.<sup>35</sup> Signature of any new international human rights instrument should provide an opportunity for an audit of national law and policy with a view to removing any incompatibilities with the rights guaranteed before ratification, in so far as possible.**

27. We expressed our concern, in our first Report on the Convention, that the Government’s approach to ratification appeared to involve asking Government Departments and Devolved Administrations for a “wish-list” of reservations or interpretative declarations and that it was unclear whether departmental requests had been effectively challenged. The evidence presented by the Minister for Disabled People reinforced our view that ultimately, requests from Departments were subject to very limited scrutiny as to whether they were compatible with the object and purpose of the Convention.<sup>36</sup>

28. In its response, the Government rejected this impression, arguing that the Office for Disability Issues had worked very closely with Devolved Administrations and Departments “on emerging issues”. This liaison had involved “scrutiny, discussion and challenge at all stages resulting in a significantly shorter list of reservations and declarations than was first identified”.<sup>37</sup> We cannot accept the Government’s reassurance that the Office for Disability Issues has been responsible for challenging requests for reservations or interpretative declarations without some scepticism, not least because the process of arriving at the

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<sup>33</sup> Ibid, paragraphs 7-9

<sup>34</sup> Annual Report of the UN High Commissioner for Human Rights, *Thematic Study by the Office of the UN High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities*, 26 January 2009, A/HRC/10/48, para 20.

<sup>35</sup> *DRC Reply*, para 16.

<sup>36</sup> *DRC Report*, para 39.

<sup>37</sup> *DRC Reply*, para 4.

current list of reservations and the interpretative declaration has been so opaque. The list presented to Parliament is very similar to the list of issues which was being considered in May 2008, when the possibility of making reservations was first announced by the then Minister for Disabled People, Anne McGuire MP.<sup>38</sup> Since then, one reservation being discussed has been dropped and another has been proposed.<sup>39</sup> **Acceptance of new international human rights standards should not trigger a “wish-list” approach to potential reservations from departments seeking to protect existing policies and practices. We note the Government’s argument that the Office of Disability Issues has been involved in scrutinising, discussing and challenging individual proposals for reservations but regret that the majority of the reservations outlined to us last year have survived that scrutiny process apparently unscathed, despite the existence of serious concerns in relation to many of them, as we discuss below.**

29. We are conscious of the difficulties that we have experienced in persuading the Government to remove reservations once they are in place. We and our predecessor Committee repeatedly recommended that the Government should withdraw reservations to the UN Convention on the Rights of the Child (UNCRC), including an immigration reservation which we and our predecessor Committee considered was neither necessary nor compatible with the object and purpose of the Convention.<sup>40</sup> In response to each of these recommendations, the Government maintained its view that the reservation was necessary and compatible with the object and purpose of the UNCRC.<sup>41</sup>

30. The Government finally withdrew its reservations to the UNCRC in September 2008, sixteen years after the Convention was ratified, in January 1992. This experience illustrates that, once in place, it can be difficult to persuade the Government that reservations to international human rights treaties are not required.

**31. Our experience in scrutinising the United Kingdom implementation of the UNCRC is that reservations, once in place tend to persist even where UN monitoring bodies, parliamentary committees and civil society organisations are united in the view that they are unnecessary and incompatible with the object and purpose of the treaty. We start our scrutiny of the reservation and interpretative declaration proposed for this Convention from the standpoint that there should be as few such statements as possible, preferably none, and that where such statements are necessary, the Government should be committed to making the legislative and other changes necessary to enable them to be withdrawn as soon as practicable.**

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<sup>38</sup> *DRC Report*, paras 3 - 8

<sup>39</sup> *DRC Report*, para 8. Over the course of the past year, a reservation was being considered in respect of cultural services, which does not appear in the Explanatory Memorandum. A number of additional matters were being discussed in May 2008, including in relation to capacity and mental health, in respect of choice or residence. Although it was clear that issues relating to capacity were being considered, this was not clearly related to the issue of benefits appointees now proposed to be subject to reservation.

<sup>40</sup> See for example, Tenth Report of 2002-03, *The UN Convention on the Rights of the Child*, HL Paper 117, HC 81, para 65; Seventeenth Report of Session 2001-02, *Nationality Immigration and Asylum Bill*, HL 132, HC 961, para 17; Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers*, HL 81, HC 60, paras 173 - 182.

<sup>41</sup> See for example, Eighteenth Report of 2002-03, *Government’s Response to Tenth Report of 2002-03 on The UN Convention on the Rights of the Child*, Annex, para 20; Seventeenth Report of Session 2006-07, *Government’s Response to Tenth Report of Session 2006-07, The Treatment of Asylum Seekers*, HL 81, HC 60, paras 27 - 28.

32. We consider each of the Government's proposals for reservations and its proposal for an interpretative declaration below. Our consideration aims to provide Members of both Houses with our views on three questions:

- Are the proposals necessary?
- Are the proposals compatible with the object and purpose of the Convention?
- Are there any other additional matters about the Government's proposals which both Houses should consider?

### **Special schools and parental choice: Right to education (Article 24)**

33. The bulk of the evidence which we have received on the Convention has related to the Government's proposal to lodge a reservation and an interpretative declaration in respect of the right to education. The Explanatory Memorandum explains:

The Government intends to enter an interpretative declaration to make clear that the UK general education system includes both mainstream and special schools, thereby clarifying how the UK Government interprets the Convention. [...] A reservation will be entered to allow for circumstances where disabled children's needs may be best met through specialist provision.

34. The reservation proposed states:

The UK reserves the right for disabled children to be educated outside their local community where more appropriate educational provision is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated.

35. The interpretative declaration includes an express commitment to inclusive education, but expresses the Government's view that any general education system may include both special and mainstream schools:

The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff and which have the capacity to meet the needs of disabled children. The General Educational System in the UK includes mainstream and special schools, which the UK Government understands is allowed under the Convention.

36. Article 24 of the Convention provides:

State Parties recognise the right of persons with disabilities to education. With a view to realising this right without discrimination and on the basis of equal opportunity, State Parties shall ensure an inclusive education system at all levels and lifelong learning [...]

In realising this right, State Parties shall ensure that:



- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- (c) Reasonable accommodation of the individual's requirements is provided;
- (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- (e) Effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.

37. Like all other economic and social rights in the Convention, the right to education is subject to the principle of progressive realisation according to available State resources.<sup>42</sup>

38. Two broadly opposing views were represented in the evidence which we received on this issue. On the one hand, a number of witnesses argued that the reservation and interpretative declaration are necessary to ensure that special schools remain an option for children and adults with disabilities whose educational and development needs cannot be met in another setting.<sup>43</sup> Some witnesses argued that parents should be entitled to request this type of provision for their severely disabled children or those with complex support needs.<sup>44</sup> This provision might necessarily be provided away from some local communities, but may be the best provision to meet their child's needs.<sup>45</sup> For example, RESCARE, an organisation representing children and adults with learning disabilities and their families, told us:

We consider that the reservations are essential in meeting the needs of children and young people with learning disabilities, autism and other complex needs as an option for their parents.<sup>46</sup>

39. Mr Simon Burdis added:

It does not matter how inclusive and accessible mainstream schools are made, a substantial proportion of children need the dignity and expertise of a special school environment whether provided by the State..., independent, voluntary, or charitable sector according to need. Where a local area does not have a range of appropriate mainstream and special school provision of different kinds to meet different needs

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<sup>42</sup> Article 4

<sup>43</sup> See for example, Memorandum submitted by Anita Bennet, pp32-32, below.

<sup>44</sup> See for example, Memorandum submitted by Evan Davies, pp35-36; Memorandum submitted by Mrs Kim Wood, pp 36-37, below.

<sup>45</sup> Memorandum submitted by Rescare, page 45, below

<sup>46</sup> Memorandum submitted by Simon Burdis, page 47, below.

available, it is especially important that parents and family carers retain the right to be able to choose appropriate special school and other specialist provision.<sup>47</sup>

40. On the other hand, a number of witnesses, including the UN Convention Campaign Coalition, representing 33 disabled people's organisations; the EHRC and the NIHRC, argue that this reservation is not necessary or compatible with the concept of the progressive realisation of inclusive education envisaged by the Convention. The EHRC considers that this reservation lacks aspiration and represents a change in UK policy, as it appears that the UK now openly accepts that segregated special schools will always play a part in the general system of education in the UK. They had understood that previous policy aspired towards mainstream schools becoming progressively more inclusive, including through the increased co-location of specialist and mainstream provision. The NIHRC express a similar view.

41. The UN Convention Campaign Coalition told us:

The UNCCC believes that the Convention provides an opportunity to take proactive steps to improve access to mainstream education so parents have a genuine choice in schooling their child. We are concerned that the Government is not taking a balanced approach in its promotion of parental choice and is in danger of completely ignoring the interests of disabled children. [...] UNCCC do not regard segregation and separation in special settings [as] inclusion.<sup>48</sup>

42. Disability Action expressed their concern about the inclusion of special schools within the UK understanding of its general education system:

If someone is sent to a particular school 'on the basis of disability', then they are clearly not being educated within the 'general education system' as that phrase is used in Article 24. Indeed the system that excludes cannot be the same system that includes or proposed to include. [...] Entering these reservations would have the effect of retaining separate special schools for some disabled children permanently in the UK. This is clearly in direct conflict with the goal of achieving a more inclusive education system for children and young people. Indeed the requirement to progressively realise the right to education as specified under Article 4 (2) of the UNCRPD renders such a reservation unnecessary.<sup>49</sup>

43. We note the wide spectrum of views that have been expressed in respect of the need for the Government's proposed reservation and interpretative declaration in relation to education. We regard the wide divergence of views as a good indication that the relevant provisions of the Convention leave considerable scope for disagreement about their meaning. On one reading, the Convention requires States to move progressively towards the elimination of special schools. On another view, the Convention permits States to continue to provide education at special schools, provided they are also working to increase access to mainstream schools. The justification for entering a reservation or

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<sup>47</sup> EHRC, Commission's Statement Concerning the UK Government's Explanatory Memorandum on the UN Convention on the Rights of Persons with Disabilities, 9 March 2009.

<sup>48</sup> Memorandum submitted by UNCCC, page 50, below.

<sup>49</sup> Memorandum submitted by Disability Action, pp 34-35, below.



interpretative declaration in relation to provisions whose meaning is unclear is likely to be stronger for that reason.

44. We see no necessary contradiction between requiring States to take steps to increase access to mainstream education on the one hand, and allowing them to maintain special schools for those whose needs are such that it would not be in their interests to be educated in a mainstream setting. A commitment to progressive realisation of inclusive education does not in our view entail a commitment to the elimination of special schools. We can see, however, that the provisions of the Convention could be interpreted in that way and **we therefore understand why the Government feels it necessary to enter a reservation and an interpretative declaration to make clear its understanding that a commitment to inclusive education is not incompatible with the continued existence of special schools.**

45. At the same time, we understand the concern expressed by some witnesses that the justification provided by the Government for its proposals - being based on the need to maintain special schools as part of the general education system and focusing on parental choice - could be interpreted as indicating that the Government is moving away from the current statutory position, which contains a strong presumption that a child who has special educational needs *must* be educated in a mainstream school unless this would be incompatible with (a) the wishes of the child's parents or (b) the provision of efficient education of other children.<sup>50</sup> These are the only reasons why mainstream education can be refused for a child with special educational needs. The relevant Departmental Guidance on the duty to educate in a mainstream school states:

Mainstream education cannot be refused on the grounds that the child's needs cannot be provided for within the mainstream sector. The general duty assumes that with the right strategies and support most children with special educational needs can be included successfully at a mainstream school. The local education authority should be able to provide a mainstream option for all but a small minority of pupils. Local education authorities should look across all of their schools and seek to provide appropriate mainstream provision where possible.<sup>51</sup>

46. **We welcome the restatement in the Explanatory Memorandum of the Government's commitment to inclusive education. We are concerned, however, that the scope of the reservation and interpretative declaration may send a confused message to people with disabilities about the purpose and intention of the Government's position. We call on the Government to confirm that nothing in its reservation and interpretative declaration is intended to enable the Government to dilute in any way the current strong statutory presumption in favour of mainstream education for children with special educational needs. We also ask the Government to confirm that the purpose of its proposed reservation and interpretative declaration is simply to clarify that nothing in the Convention requires the Government to work towards the eventual elimination of special schools in the UK. If this is the purpose of the Government's reservation and interpretative declaration, we accept that a lack of**

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<sup>50</sup> Sections 316 and 316A Education Act 1996. The situation in Northern Ireland is governed by a similar statutory presumption in the Special Educational Needs and Disability (Northern Ireland) Order (2005)

<sup>51</sup> DfES Guidance 0774/2001.

**clarity in the Convention may necessitate a reservation and an interpretative declaration which is compatible with the object and purpose of the Convention.**

### **Service in the Armed Forces: Work and employment (Article 27)**

47. The Government intends to enter a reservation to the Convention in respect of service in the armed forces. Service in the armed forces is already exempt from the application of the Disability Discrimination Act (as amended). The Explanatory Memorandum explains the Government's position:

The Government has decided to exclude members of the Armed Forces in the DDA because Armed Forces personnel need to be combat effective in order to meet a world-wide liability to deploy, and to ensure that military health and fitness remain matters for Ministry of Defence (MoD) Ministers based on military advice, not for the courts.

[...]

Recruiting non-deployable people, or those with limited deployability, would have an impact on the general levels of non-deployability within the Services and would run the risk of creating a two-tier system between those who are deployable and those who are not. This would have an adverse effect on morale and operational effectiveness by placing undue stress on those fit to serve on the frontline and who would have to absorb the increased operational turn-around and frequency of operational tours.

48. The text of the proposed reservation provides:

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

49. The Explanatory Memorandum makes clear that this reservation is the subject of ongoing discussion with the European Commission. The current draft proposals for ratification by the European Commission would permit, but not require, Member States to make a reservation of the type proposed by the Government. So far, no EU party to the Convention has entered a similar reservation.

50. Article 27 of the Convention recognises the right of persons with disabilities to work, on an equal basis with others. State Parties are required to safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment.

51. In our last report, we expressed our view that the Government should consider removing the existing exemption for service in the armed forces from the Disability Discrimination Act (as amended) in the forthcoming Equality Bill. We stressed that

evidence should be provided to support any justification provided by the Ministry of Defence that the existing exemption is necessary.

52. The evidence which we received on this proposal argued that the reservation was unnecessary to achieve the objectives of the Ministry of Defence. For example, Leonard Cheshire told us:

There is no legal requirement in the Convention to hire personnel unable to do the job they are recruited for; the obligation is to ensure a non-discriminatory and accessible work environment when it is reasonable to do so. As such the reservation is unnecessary and sends an unhelpful negative message about the support that those who acquire an impairment during their service can expect to receive.<sup>52</sup>

53. The EHRC agreed with this view and said that:

The only impact for the MOD of lifting the exemption would be to prevent it from making unwarranted generalisations about disabled people's capacity to serve, and to help ensure the consistent application of existing good practice across the armed forces.<sup>53</sup>

54. The Explanatory Memorandum explains that Ministers wish to retain the discretion to take decisions about capacity to serve based on "military advice", without the scrutiny of the courts. We have seen no evidence to support the Government's position that this exemption is justified and appropriate, other than the desire expressed by the Ministry of Defence to retain control over the assessment of fitness for service. We note the conclusion of the EHRC in respect of the removal of a similar exemption from the Disability Discrimination Act (as amended) for police forces:

The exemption which ...applied to the police and fire services...was lifted in 2005, with no negative impact upon the ability of both services to determine objectively who joins the services, or upon operational effectiveness.<sup>54</sup>

**55. We doubt whether the continuing exemption from the Disability Discrimination Act (as amended) is necessary. While this exemption remains in force, we acknowledge that the reservation proposed by the Government is necessary to achieve the Government's policy objective. In our view, the existing exemption is inconsistent with the requirements of the Convention and would be subject to challenge without a reservation. We reiterate our recommendation that the existing exemption should be reconsidered in the Equality Bill.**

56. The breadth of the exemption is such that it proposes to exempt the armed forces in their entirety from the requirement to treat service personnel, or those who seek to apply for service, without discrimination on the grounds of disability. This would extend to exempting all armed forces from the requirement not to discriminate without justification against existing service personnel who incur a disability in the course of their service. This reservation would permit the armed forces automatically to discharge a service person with

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<sup>52</sup> Memorandum submitted by Leonard Cheshire, page 39, below.

<sup>53</sup> EHRC, Commission's Statement Concerning the UK Government's Explanatory Memorandum on the UN Convention on the Rights of Persons with Disabilities, 9 March 2009.

<sup>54</sup> Ibid.

disabilities, without justification, simply on the basis that he or she has a disability. **Given the breadth of the proposed reservation in respect of service in the armed forces – seeking as it does to remove a major public authority entirely from a basic provision on non-discrimination in access to employment – we consider that it is open to challenge as being incompatible with the object and purpose of the Convention.**

57. The EHRC has suggested that an amendment to the Disability Discrimination Act to provide express justification for service in the armed forces, based on the provisions in the Sex Discrimination Act and limited to combat effectiveness, could be justifiable.<sup>55</sup> **If the Government decides to lodge a reservation in the terms it proposes, or any alternative based on the principle of combat effectiveness, we recommend that the Government should commit to keep the reservation under review and undertake to reconsider the necessity for the reservation within 6 months of Royal Assent being granted in respect of the forthcoming Equality Bill.**

### **Immigration: liberty of movement**

58. It has been clear since May 2008 that the Home Office would be seeking an immigration based reservation to the Convention. In our last Report, we criticised the lack of clarity in respect of the proposals for this reservation, noting that it was unclear whether the Government was proposing a reservation in respect of specific immigration and citizenship rights or whether the Home Office was simply seeking a “catch all” reservation intended to cover some as yet undetermined policy objective.<sup>56</sup>

59. The Explanatory Memorandum explains that the Government proposes to enter a reservation in respect of liberty of movement:

A general reservation will be entered in order to retain the right to apply immigration rules and to retain the right to introduce wider health screening for applicants entering or seeking to remain in the UK, particularly in the event of a global health emergency, if this is considered necessary to protect public health.

This clarifies the Government’s understanding that the Convention does not create new or additional rights for non-UK national disabled people relating to the entry into, stay in and departure from the United Kingdom.

60. The Government proposes a reservation in the following terms:

The United Kingdom reserves the right to apply such legislation, insofar as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, as it may deem necessary from time to time.

61. The breadth of this proposal is clear when contrasted with the narrower interpretative declaration on immigration rights made by Australia:

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<sup>55</sup> EHRC, Commission’s Statement Concerning the UK Government’s Explanatory Memorandum on the UN Convention on the Rights of Persons with Disabilities, 9 March 2009. See Sex Discrimination Act 1975, Section 85.

<sup>56</sup> *DRC Report*, para 70.

Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.

62. The Explanatory Memorandum explains that the UK's proposed reservation is intended as a general reservation to the whole Convention, and is not specifically targeted at Article 18 and the right to liberty of movement.<sup>57</sup> This is consistent with the evidence which we took from the Minister for Disabled People, that the Home Office was seeking reservations or declarations in respect of immigration and citizenship, "with particular but not necessarily exclusive focus on Article 18 of the Convention".<sup>58</sup> **We regret the lack of clarity in the Explanatory Memorandum in respect of the implications of the proposed reservation on liberty of movement for the requirements of the Convention. The breadth of the proposed reservation and its purpose is entirely unclear. We are disappointed that the elastic text of the proposed reservation confirms our earlier concern that the Home Office is seeking "catch-all" protection for any policy relating to immigration and nationality against the full application of the rights recognised by the Convention.**

63. The Government's proposal is nearly identical to a similar reservation to Article 22 of the UNCRC which has recently been removed.<sup>59</sup> The justification proposed by the Government in respect of that reservation was similarly vague and accompanied by the explanation that nothing in the UNCRC was intended to create any further legal obligations in respect of those subject to immigration control.<sup>60</sup> We consider that our predecessor Committee's conclusions in respect of the immigration reservation to the UNCRC apply with equal force in respect of this proposed reservation. It is neither necessary nor compatible with the object and purposes of the Convention.

64. There is nothing in the Convention which would grant additional rights to people with disabilities in respect of the right to enter or remain in the United Kingdom. The only positive requirement of the Convention is that State Parties shall recognise the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, *on an equal basis with others* (Article 18, emphasis added). This may include a requirement to make reasonable accommodation for people with disabilities, including making appropriate modification and adjustments not imposing a disproportionate burden on the State if needed in a particular case, to ensure to persons with disabilities the equal enjoyment of the right to liberty of movement. However, in our

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<sup>57</sup> Article 18 of the Convention provides persons with disabilities with the right to liberty of movement, freedom to choose their residence and to a nationality, on an equal basis with others. It also provides further details of how the right should be secured, including by ensuring that people with disabilities are not arbitrarily deprived of their freedom of movement.

<sup>58</sup> *DRC Report*, Ev 15

<sup>59</sup> That amendment provided: "The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under [UK] law to enter and remain in the UK, and to the acquisition and possession of citizenship, as it may deem necessary from time to time."

<sup>60</sup> Tenth Report of 2002-03, paragraph 82.



view, the obligation to make reasonable adjustments is one familiar to all public authorities in the United Kingdom. Adjustments or modifications do not create new rights, but enable disabled people to exercise the same rights as everyone else without discrimination.

65. We are particularly concerned about the Government's proposal that this reservation may be necessary in order to deal effectively with public health emergencies. We agree with a number of our witnesses that the Government already has broad powers to deal with public health emergencies and to control entry into the United Kingdom for the purposes of protecting public health.<sup>61</sup> We considered these powers most recently in our scrutiny of the Health and Social Care Act 2008, which provided for the wide-spread reform of the Government's powers to deal with risks to public health.<sup>62</sup> These powers apply to all people, regardless of whether they have disabilities or not. In our view, there is nothing in the Convention which would require an amendment to the existing law or which could limit its effectiveness. We agree with a number of witnesses who wrote to tell us that this amendment appeared to conflate disability with the risks posed to public health by disease. We consider that this approach illustrates an unfortunate lack of awareness of the rights of people with disabilities.

66. Disability Action, a Northern Irish NGO, told us that this reservation:

[W]ill only serve to perpetuate the misconception that Government can 'pick and choose' who should be allowed to enter and remain in the UK based on the perceived severity of a person's disability – a course of action which would be clearly discriminatory.<sup>63</sup>

67. In our recent report on the Borders, Immigration and Citizenship Bill, we considered the potential for the Government's proposals to accelerate naturalisation by individuals participating in "active citizenship" to have a discriminatory effect on people with disabilities. This provides a good example of how the Convention might affect domestic immigration policy. There is nothing in the Convention which would require the Government to grant citizenship to people with disabilities on a more favourable basis than others. However, the right to liberty of movement without discrimination in Article 18 of the Convention restates and bolsters existing rights of individuals to enjoy treatment without unjustified discrimination in the protection of the law (guaranteed by common law)<sup>64</sup> and in their enjoyment of Convention rights, such as the right to respect for private and family life (as guaranteed by Articles 8 and 14 ECHR).<sup>65</sup>

**68. We are concerned that the Government is pursuing a broad, general reservation related to immigration control. The Government has not provided an adequate explanation of its view that the proposed reservation is necessary. In any event, we consider that there is nothing in the Convention or in domestic law which could justify a reservation of the breadth proposed.**

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<sup>61</sup> Public Health Act 1984, as amended by Health and Social Care Act 2008.

<sup>62</sup> Twelfth Report of Session 2007-08, *Legislative Scrutiny: 1) Health and Social Care Bill and 2) Child Maintenance and Other Payments Bill: Government Response*, HL Paper 66/ HC 379.

<sup>63</sup> Memorandum submitted by Disability Action, page 33, below.

<sup>64</sup> *Matadeen v Pointu* [1998] 3 LRC 542, para 542; [1999] 1 AC 98, para 109; *M v Secretary of State for Work and Pensions* [2006] 2 AC 91, para 136.

<sup>65</sup> Ninth Report of 2008-09, *Borders, Citizenship and Immigration Bill*, HL Paper 62, HC 35, para 1.49

69. **Read literally, this reservation could disapply the Convention in its entirety in so far as its protection might relate to people subject to immigration control. In our view, this is incompatible with the object and purpose of the Convention and does not constitute a valid reservation.**

70. **We recommend that the Government abandon this reservation. We consider that it is both unnecessary and inconsistent with the object and purpose of the Convention.**

71. We note the Government's commitment to review this proposed reservation within 12 months. **If the Government proceeds to lodge this reservation, we recommend that the review, 12 months after ratification, should provide a clear analysis of why the Government considers the reservation is necessary and compatible with the object and purpose of the Convention. This review must answer the concerns we have set out above and should contain examples and evidence to support the Government's views on the continuing need for the reservation.**

### **Review of benefits appointees: equal recognition (Article 12(4))**

72. The final reservation proposed by the Government involves the guarantee in the Convention for all disabled people of equal recognition before the law.<sup>66</sup>

73. Article 12(4) of the Convention recognises that people with disabilities who lack capacity may need additional protection in order to secure equal recognition in domestic legal systems. It provides that States shall ensure that domestic measures which deal with the exercise of legal capacity (for example, the ability to take legally binding decisions for oneself) shall provide for "appropriate and effective safeguards to prevent abuse in accordance with international law". Such safeguards must include that laws and other measures which address capacity:

- "respect the rights, will and preferences of the person, are free of conflict of interest and undue influence";
- "are proportional and tailored to a person's circumstances";
- "apply for the shortest time possible"; and
- "are subject to regular review by a competent, independent and impartial authority or judicial body".

74. The Explanatory Memorandum explains the Government's view that domestic law on benefits is incompatible with the last of these requirements:

There is currently no review system for Department of Work and Pensions (DWP) appointees, i.e. people who are appointed to claim and collect benefits on behalf of another person due to that person's lack of physical or mental capacity.

75. The Government proposes a reservation in the following terms:

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<sup>66</sup> Article 12

The United Kingdom's arrangements, whereby the Secretary of State may appoint a person to exercise rights in relation to social security claims and payments on behalf of an individual who is for the time being unable to act, are not at present subject to the safeguard of regular review, as required by Article 12.4 of the Convention and the UK reserves the right to apply those arrangements. The UK is therefore working towards a proportionate system of review.

76. The EHRC agrees that the current system for benefits appointees is incompatible with the requirements of the Convention and commends the DWP for its commitment to address this issue of incompatibility:

We hope the important policy gap identified by the DWP concerning the need for 'regular review' by a competent, independent and impartial authority or judicial body of DWP appointees...will be addressed as a matter of urgency. The solution arrived at should be sufficient to allow the DWP to withdraw this reservation. The Commission will closely monitor developments and looks forward to being consulted by the Department.<sup>67</sup>

77. Most of the submissions we received on this proposal argued for an urgent solution to remove the identified incompatibility with the Convention and regretted the need for the reservation. Witnesses agreed that new measures should be brought forward to remove the incompatibility as soon as possible. Some witnesses argued that a reservation was not necessary, but others told us that although the reservation was necessary, action should be taken swiftly to allow the UK to withdraw the reservation.

78. In effect, the Government accepts that the current domestic law is incompatible with the requirements of Article 12(4) of the Convention. **We welcome the recognition by the Government that the existing treatment of benefits appointees is incompatible with the requirements of the Convention. We agree with the Government's analysis and consider that, without any change to the current provision, a reservation is necessary.**

79. The equal protection of the law for people with disabilities is a key element of the package of rights recognised by the Convention. Without equal protection of the law, many other rights may be out of the reach of people with disabilities and particularly those who lack capacity. By reserving the right to maintain in force measures which do not provide the safeguards required by the Convention, the proposed reservation is, in our view, open to challenge by other States as incompatible with the object and purpose of the Convention. However, in our view, the risk of challenge is substantially reduced in the light of the commitment by the UK Government to work towards a compatible and proportionate system of review for benefits appointees. **We recommend that the Government publish details of its proposal for a new review mechanism for benefits appointees, together with any necessary legislative changes and the timetable for reform, without delay. In keeping with the requirements of the Convention, we recommend that the Government publish its plans for consultation and that the Department for Work and Pensions should consult with disabled people and their organisations. The Government's proposals will be scrutinised for compatibility with**

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<sup>67</sup> EHRC, Commission's Statement Concerning the UK Government's Explanatory Memorandum on the UN Convention on the Rights of Persons with Disabilities, 9 March 2009.



**the Convention and should be designed to facilitate removal of the proposed reservation.**

**80.** This reservation was first raised publicly in evidence to our Committee on 18 November 2008, almost two years after the UK signed the Convention. During this time, a number of welfare reforms have been enacted, including the Welfare Reform Act 2008. In addition, amendments to the Mental Capacity Act 2005 were included in the Mental Health Act 2007. These were opportunities to address the issue of benefits appointees, which were missed and we note that there are no proposals for reform in the Welfare Reform Bill which is currently before Parliament. **If legislative changes are needed to implement the Government's plans to create a system of review for benefits appointees, we recommend that the Government consider making appropriate amendments to the Welfare Reform Bill.**

## 4 Conclusion

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81. We welcome the progress the Government has made in meeting its own revised deadline to ratify by spring 2009. Ratification of the Convention - the first major human rights treaty of the twenty-first century - will send a strong message to disabled people in the UK and around the world that the UK acknowledges that they are entitled to treatment without discrimination and the equal enjoyment of the fundamental human rights enjoyed by us all. **If the Government cannot be persuaded that reservations or interpretative declarations are unnecessary, ratification should take priority over lengthy and futile discussions which would only serve to delay the participation of the United Kingdom in this important international agreement.**

82. We reiterate our disappointment that there has been insufficient consultation on the Government's proposals for reservations and an interpretative declaration, particularly given the limited opportunity for Parliament to influence the ratification process. We urge the Government to listen to the views being expressed about the reservations and interpretative declaration and accept that two of their proposed reservations are unnecessary or incompatible with the object and purpose of the Convention.

83. **We are concerned that the Government's approach some of its proposed reservations has been unduly cautious and may detract from the positive role which the United Kingdom has so far played in the adoption and promotion of the Convention.**

84. **We will keep compliance with the Convention under review and will continue to challenge the necessity and desirability of any reservations and interpretative declarations lodged on ratification. We look forward to the day when the reservations and interpretative declaration can be withdrawn.**

# Conclusions and recommendations

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## Introduction

1. We welcome the Government's decision to sign the Optional Protocol to the Convention and recommend that the Government confirm its proposed timetable for ratification without delay. (Paragraph 3)

## Progress towards ratification

2. We remain of the view that the Government should have consulted on both the justifications for and the precise terms of the reservations and interpretative declaration it proposes to make to the Convention, either before the Convention was laid before Parliament, or for a specified period after the Convention was laid and before ratification. It is not acceptable for the Government to claim that consultation cannot take place now because of the need to ratify as soon as possible, when the Government delayed its own timetable for ratification in order for departments to agree their positions. Nor can inviting disabled people and organisations to write to the Minister or other parliamentarians be a substitute for a proper consultation on the terms on which the UK will ratify the Convention (Paragraph 13)
3. We again draw attention to the limited extent to which Parliament can scrutinise Government proposals to ratify treaties. We call on the Government to bring forward its proposals for enhancing parliamentary scrutiny of treaties as soon as possible, whether in the Constitutional Renewal Bill, or otherwise. (Paragraph 18)
4. While we welcome the fact that there will be debates in both Houses on the Convention, this will only happen because the Convention is to be ratified by the EU and the Commons debate is likely to take place in a Delegated Legislation Committee. This is a further illustration of the lack of parliamentary control over treaties entered into by the UK. We recommend that the Government make time for a full debate on the Convention in both Houses. (Paragraph 19)
5. The Government should clarify whether specifying the Convention as a Community Treaty is a necessary step to UK ratification and how this will affect the UK's timetable for ratification, particularly if the scrutiny reserves of Parliament's EU Committees are engaged. (Paragraph 20)

## Reservations: general

6. We are satisfied that the Explanatory Memorandum sets out the Government's view (that its proposals for reservation are necessary), subject to a notable exception which we consider below. While we may disagree with them, the Government's views are clearly discernible from the contents of the Explanatory Memorandum. We regret, however, that the Explanatory Memorandum provides no explanation of the Government's view that its proposals for reservations and an interpretative declaration are compatible with the object and purpose of the Convention. (Paragraph 22)

7. We welcome the Government's view that the UK should not accede to any treaty unless domestic law and practice are capable of complying with its obligations. (Paragraph 26)
8. Signature of any new international human rights instrument should provide an opportunity for an audit of national law and policy with a view to removing any incompatibilities with the rights guaranteed before ratification, in so far as possible. (Paragraph 26)
9. Acceptance of new international human rights standards should not trigger a "wish-list" approach to potential reservations from departments seeking to protect existing policies and practices. We note the Government's argument that the Office of Disability Issues has been involved in scrutinising, discussing and challenging individual proposals for reservations but regret that the majority of the reservations outlined to us last year have survived that scrutiny process apparently unscathed, despite the existence of serious concerns in relation to many of them, as we discuss below. (Paragraph 28)
10. Our experience in scrutinising the United Kingdom implementation of the UNCRC is that reservations, once in place tend to persist even where UN monitoring bodies, parliamentary committees and civil society organisations are united in the view that they are unnecessary and incompatible with the object and purpose of the treaty. We start our scrutiny of the reservation and interpretative declaration proposed for this Convention from the standpoint that there should be as few such statements as possible, preferably none, and that where such statements are necessary, the Government should be committed to making the legislative and other changes necessary to enable them to be withdrawn as soon as practicable. (Paragraph 31)

## Education

11. We [therefore] understand why the Government feels it necessary to enter a reservation and an interpretative declaration to make clear its understanding that a commitment to inclusive education is not incompatible with the continued existence of special schools. (Paragraph 44)
12. We welcome the restatement in the Explanatory Memorandum of the Government's commitment to inclusive education. We are concerned, however, that the scope of the reservation and interpretative declaration may send a confused message to people with disabilities about the purpose and intention of the Government's position. We call on the Government to confirm that nothing in its reservation and interpretative declaration is intended to enable the Government to dilute in any way the current strong statutory presumption in favour of mainstream education for children with special educational needs. We also ask the Government to confirm that the purpose of its proposed reservation and interpretative declaration is simply to clarify that nothing in the Convention requires the Government to work towards the eventual elimination of special schools in the UK. If this is the purpose of the Government's reservation and interpretative declaration, we accept that a lack of clarity in the Convention may necessitate a reservation and an interpretative

declaration which is compatible with the object and purpose of the Convention. (Paragraph 46)

### Armed forces

13. We doubt whether the continuing exemption from the Disability Discrimination Act (as amended) [for service in the armed forces] is necessary. While this exemption remains in force, we acknowledge that the reservation proposed by the Government is necessary to achieve the Government's policy objective. In our view, the existing exemption is inconsistent with the requirements of the Convention and would be subject to challenge without a reservation. We reiterate our recommendation that the existing exemption should be reconsidered in the Equality Bill. (Paragraph 55)
14. Given the breadth of the proposed reservation in respect of service in the armed forces – seeking as it does to remove a major public authority entirely from a basic provision on non-discrimination in access to employment – we consider that it is open to challenge as being incompatible with the object and purpose of the Convention. (Paragraph 56)
15. If the Government decides to lodge a reservation in the terms it proposes, or any alternative based on the principle of combat effectiveness, we recommend that the Government should commit to keep the reservation under review and undertake to reconsider the necessity for the reservation within 6 months of Royal Assent being granted in respect of the forthcoming Equality Bill. (Paragraph 57)

### Immigration

16. We regret the lack of clarity in the Explanatory Memorandum in respect of the implications of the proposed reservation on liberty of movement for the requirements of the Convention. The breadth of the proposed reservation and its purpose are entirely unclear. We are disappointed that the elastic text of the proposed reservation confirms our earlier concern that the Home Office is seeking “catch-all” protection for any policy relating to immigration and nationality against the full application of the rights recognised by the Convention. (Paragraph 62)
17. We are concerned that the Government is pursuing a broad, general reservation related to immigration control. The Government has not provided an adequate explanation of its view that the proposed reservation is necessary. In any event, we consider that there is nothing in the Convention or in domestic law which could justify a reservation of the breadth proposed. (Paragraph 68)
18. Read literally, this reservation could disapply the Convention in its entirety in so far as its protection might relate to people subject to immigration control. In our view, this is incompatible with the object and purpose of the Convention and does not constitute a valid reservation. (Paragraph 69)
19. We recommend that the Government abandon this reservation. We consider that it is both unnecessary and inconsistent with the object and purpose of the Convention. (Paragraph 70)

## Benefits appointees

20. If the Government proceeds to lodge this reservation, we recommend that the review, 12 months after ratification, should provide a clear analysis of why the Government considers the reservation is necessary and compatible with the object and purpose of the Convention. This review must answer the concerns we have set out above and should contain examples and evidence to support the Government's views on the continuing need for the reservation. (Paragraph 71)
21. We welcome the recognition by the Government that the existing treatment of benefits appointees is incompatible with the requirements of the Convention. We agree with the Government's analysis and consider that, without any change to the current provision, a reservation is necessary. (Paragraph 78)
22. We recommend that the Government publish details of its proposal for a new review mechanism for benefits appointees, together with any necessary legislative changes and the timetable for reform, without delay. In keeping with the requirements of the Convention, we recommend that the Government publish its plans for consultation and that the Department for Work and Pensions should consult with disabled people and their organisations. The Government's proposals will be scrutinised for compatibility with the Convention and should be designed to facilitate removal of the proposed reservation. (Paragraph 79)
23. If legislative changes are needed to implement the Government's plans to create a system of review for benefits appointees, we recommend that the Government consider making appropriate amendments to the Welfare Reform Bill. (Paragraph 80)

## Conclusion

24. If the Government cannot be persuaded that reservations or interpretative declarations are unnecessary, ratification [of the Convention] should take priority over lengthy and futile discussions which would only serve to delay the participation of the United Kingdom in this important international agreement. (Paragraph 81)
25. We are concerned that the Government's approach to some of its proposed reservations has been unduly cautious and may detract from the positive role which the United Kingdom has so far played in the adoption and promotion of the Convention. (Paragraph 83)
26. We will keep compliance with the Convention under review and will continue to challenge the necessity and desirability of any reservations and interpretative declarations lodged on ratification. We look forward to the day when the reservations and interpretative declaration can be withdrawn. (Paragraph 84)

# Formal Minutes

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Tuesday 31 March 2009

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness Lord Lester of Herne Hill Lord Morris of Handsworth The Earl of Onslow Baroness Prashar	Dr Evan Harris MP Mr Edward Timpson MP
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Draft Report (*UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 84 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Twelfth Report of the Committee to each House.

*Ordered*, That the Chairman make the Report to the House of Commons and that Lord Morris of Handsworth make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 10 March.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Tuesday 21 April at 1.30pm.]



## Written Evidence

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### **Letter to Jonathan Shaw MP, Minister for Disabled People, dated 10 March 2009**

We were grateful to receive your letter of 3 March, enclosing the Government response to our report on the UN Disabled Rights Convention and the explanatory memorandum to the Convention. We note that the process for ratification of the Convention has now commenced and that ratification may occur any time after 24 March, once the period for parliamentary scrutiny under the Ponsonby Rule has elapsed.

My Committee discussed this issue at its meeting last week, when it also agreed to publish the Government response to our report. We intend to publish a short report on the Convention, focusing on the reservations and interpretative declarations which have now been published. We do not at this stage anticipate seeking any more information from you about the proposed reservations and declarations. I would be helpful, however, if you could keep us up to date with your plans for ratification and could send us the Order in Council necessary for designating the Convention as a Community treaty once it is available.

We aim to be in a position to conclude our scrutiny of the Convention around Easter. I would be grateful if you could delay ratification of the treaty until that time, to enable us to conclude our work.

### **Letter from Jonathan Shaw MP, dated 23 March 2009**

Thank you for your letter of 10 March concerning the UN Convention. I note that the Committee intends to produce a short report focusing on the proposals for reservations and a declaration to be entered on ratification of the Convention.

As you requested, I am enclosing a copy of the draft European Communities (Definition of Treaties) (United Nations Convention on the Rights of Persons with Disabilities) Order 2009, which has now been laid before Parliament.

### **Memorandum submitted by Anita Bennett, dated 23 March 2009**

I wish to make a submission to the Joint Committee on Human Rights in respect of the UN Convention on the Rights of Persons with Disabilities (the UN Disability Convention).

I understand that your Committee is to examine the Government's response and the proposal for ratification of the UN Disability Convention but only with interpretive declarations and / or reservations (opt-outs) particularly in respect of the Convention's Article 24: Education.

I fully support the Government's proposal to ratify the Convention with certain reservations / interpretive declarations to Article 24: Education, as it is essential that the right of children and young people with special needs, learning disabilities, autism and other complex needs; and their parents / family carers; to choose a special school education is preserved and upheld.



It does not matter how inclusive and accessible mainstream schools are made, a substantial proportion of children need the dignity and expertise of a special school environment whether provided by the State (local authority), independent, voluntary or charitable sector according to need.

Where a local area does not have a range of appropriate mainstream and special school provision of different kinds to meet different needs available, it is especially important that parents and family carers retain the right to be able to choose appropriate special school and other specialist provision outside their own area. Inclusion is not achieved by closing or blocking access to the special school or other specialist provision that families need.

Where I mention the right to access special schools, this should also be taken to include the right to access special college provision.

Similarly, for adults with special needs, learning disabilities, autism and other complex and multiple conditions, they and their parents / family carers must be allowed to access a range of housing and care provision of different types to meet different needs. I note that the UN Convention also seeks to promote independent living for adults with disabilities.

My daughter with Downs Syndrome has benefitted enormously from special schools with a emphasis on adapted Rudolf Steiner approaches, especially as she got older and was simply bringing up the bottom in mainstream primary school.

## **Memorandum submitted by Disability Action, dated 23 March 2009**

### **Introduction**

Disability Action is a pioneering Northern Ireland charity working with and for people with disabilities. We work with our members to provide information, training, transport, awareness programmes and representation for people regardless of their disability; whether that is physical, mental, sensory, hidden or learning disability.

In Northern Ireland, more than one in five of the population has a disability and over one quarter of all families here are directly affected by disability issues.

As a campaigning body, we work to bring about positive change to the social, economic and cultural life of people with disabilities and consequently our entire community. In pursuit of our aims we serve 45,000 people each year.

Disability Action has recently established a Centre on Human Rights for People with Disabilities. The Centre aims to secure the human rights of people with disabilities across Northern Ireland and to foster a culture of human rights for people with disabilities through education and capacity building within the sector, and the use of lobbying, influencing and legal challenge.

The Centre on Human Rights for People with Disabilities welcomes the opportunity to submit a response to the Joint Committee on Human Rights.

## Specific Commentary

### Liberty of Movement

The Centre on Human Rights is deeply concerned at the decision of the UK Government to enter a 'general reservation' to article 18 of the UNCRPD. The need for such a reservation is not supported by any concrete evidence. The proposed reservation comes six months following the UK Government's decision to withdraw its reservation to article 22 of the UNCRC relating to immigration and citizenship, indicating yet another reversal of Government policy in this regard. Indeed, the wording of the reservation being withdrawn from UNCRC is highly similar to that being proposed to article 18 of the UNCRPD:

“The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time.” (Original reservation to Article 22 of the UNCRC)

This proposed reservation is disproportionate and without basis. The need to 'retain the right to introduce wider health screening for applicants' should not, as it appears in this instance, be directed at or associated solely with people with disabilities. This will serve only to perpetuate the misconception that Government can 'pick and choose' who should be allowed to enter and remain in the UK based on the perceived severity of a person's disability – a course of action which would be clearly discriminatory. Discrimination on the basis of disability is clearly outlawed by the UNCRPD and any reservation which attempts to allow such discrimination clearly defeats the object and purpose of the Convention and is severable from the Convention.

### Education

The Centre on Human Rights is extremely disappointed at the reservation and so-called 'interpretative declaration' that is being proposed to article 24 of the UNCRPD. The UK's proposal to enter a reservation to article 24 of the UNCRPD serves only to actively maintain, and entrench, the educational disadvantages and obstacles experienced by disabled pupils in the education system, preventing them from enjoying their right to education under this Convention.

We believe that the proposed interpretative declaration is in fact a reservation since it seeks to modify the obligations of the UK under article 24. The relevant part of article 24 reads as follows:

‘2. In realizing this right [to education], States Parties shall ensure that: (a) Persons with disabilities are not excluded from the a general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; ...’ (Article 24(2) UNCRPD)

The wording of article 24 is perfectly clear in our view. The phrase 'general education system' is clearly used in opposition to education settings which are provided 'on the basis

of disability'. This, in a UK context, clearly means special schools. To look at it another way, if someone is sent to a particular school 'on the basis of disability', then they are clearly not being educated within the 'general education system' as that phrase is used in article 24. Indeed, the system that excludes cannot be the same system that includes or promises to include. The proposed reservation is thus not sustainable in legal terms, as an interpretation of article 24, as it defeats the object and purpose of the Convention which is inclusive in nature (or at least leaves the decision to the person with a disability).

Entering these reservations, however named, to article 24 of the UNCRPD would have the effect of retaining separate special schools for some disabled children permanently in UK. This is clearly in direct conflict with the goal of achieving a more inclusive education system for disabled children and young people. Indeed the requirement to progressively realise the right to education as specified under article 4(2) of the UNCRPD renders such a reservation unnecessary.

### **Equal Recognition Before the Law – Benefit Appointees**

The Centre on Human Rights believes that insofar as the obligation contained in article 12 (4) applies to benefit appointees, it is in fact subject to progressive realization as specified under Article 4 (2) of the UNCRPD. The proposed reservation wrongly anticipates immediate effect against current arrangements and is thus completely unnecessary since it is effectively a statement of the UK Government's intention to progressively realise this right. We are not convinced that the proposed wording actually constitutes a reservation.

### **Work and Employment – Armed Forces**

The reservation relating to the employment of disabled people in the Armed Forces is unnecessary given that people with disabilities are already being recruited to the Armed Forces and that people who become disabled are retained in the Armed Forces where possible.

Article 27(1) of the UNCRPD obliges States Parties to recognise the right of people with disabilities to work, on an equal basis with others. It does not require employers to amend existing methods of recruitment where a set of objective, reasonable and justifiable criteria exist. The wording is clear in intent and the reasoning is also clear. However, the implications of the reservation being subject to discussion with the European Commission are not clear and we believe that absence of such a reservation on the part of other EU member states demonstrates that it is unnecessary and disproportionate.

### **Conclusion**

The Centre on Human Rights for People with Disabilities has welcomed the opportunity to make a submission. The Centre on Human Rights looks forward to continued dialogue on this and other issues of major significance to people with disabilities throughout Northern Ireland.

### **Memorandum submitted by Evan Davies, dated 23 March 2009**

I wish to make a submission to the Joint Committee on Human Rights in respect of the UN Convention on the Rights of Persons with Disabilities (the UN Disability Convention).

I understand that your Committee is to examine the Government's response and the proposal for ratification of the UN Disability Convention but only with interpretive declarations and / or reservations (opt-outs) particularly in respect of the Convention's Article 24: Education.

I fully support the government's proposed reservation on special schools and colleges. My own daughter went to both special and mainstream schools so that I can speak with some personal experience. She was much, much happier and did much better educationally in her special school which was the excellent Maes Dyfan School in Barry, Vale of Glamorgan. She also went on to a special residential college which was a most wonderful experience for her. I know many other parents who support my views, including some who have transferred from mainstream to special school and colleges and vice versa. I feel strongly that pupils and students with learning disabilities and their families should have the human right of choice in this respect.

### **Memorandum submitted by Mrs Kim Wood, dated 24 March 2009**

I wish to make a submission to the Joint Committee on Human Rights in respect of the UN Convention on the Rights of Persons with Disabilities (the UN Disability Convention).

I understand that your Committee is to examine the Government's response and the proposal for ratification of the UN Disability Convention but only with interpretive declarations and / or reservations (opt-outs) particularly in respect of the Convention's Article 24: Education.

I fully support the Government's proposal to ratify the Convention with certain reservations / interpretive declarations to Article 24: Education, as it is essential that the right of children and young people with special needs, learning disabilities, autism and other complex needs; and their parents / family carers; to choose a special school education is preserved and upheld.

It does not matter how inclusive and accessible mainstream schools are made, a substantial proportion of children need the dignity and expertise of a special school environment whether provided by the State (local authority), independent, voluntary or charitable sector according to need. Where a local area does not have a range of appropriate mainstream and special school provision of different kinds to meet different needs available, it is especially important that parents and family carers retain the right to be able to choose appropriate special school and other specialist provision outside their own area. Inclusion is not achieved by closing or blocking access to the special school or other specialist provision that families need.

Where I mention the right to access special schools, this should also be taken to include the right to access special college provision.

Similarly, for adults with special needs, learning disabilities, autism and other complex and multiple conditions, they and their parents / family carers must be allowed to access a range of housing and care provision of different types to meet different needs. I note that the UN Convention also seeks to promote independent living for adults with disabilities.

It is essential that a range of different types of provision is made available in every area, including independent living, supported living, village / intentional communities and residential care of different types to fit different needs. It is important that people with disabilities and other special needs and their families are able to choose such specialist provision outside their own local area, especially where a full range of different types of housing and care is not available locally.

I believe that the reservations / interpretive declarations are essential and should be drafted so as to ensure all the choices outlined above.

### **Memorandum submitted by Leonard Cheshire Disability, dated 23 March 2009**

Leonard Cheshire Disability ([www.LCDisability.org](http://www.LCDisability.org)) exists to change attitudes to disability and to serve disabled people around the world. It has been supporting disabled people for 60 years and is active in 52 countries. The charity directly supports over 21,000 disabled people in the UK.

Campaigning for the civil and human rights of disabled people is also a key activity for us. Our breadth of experience, knowledge and constituency of disabled people gives us a unique platform from which to engage in public debate and to campaign on the social policy and civil rights issues that have an impact on disabled people.

As such, we have been following developments on the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) very closely. LCD is part of the UN Convention Campaign Coalition (UNCCC), an alliance of 33 disability organisations, the aim of which is to ensure that the UK ratifies the CRPD without reservations. As well as this response, we would therefore endorse the submission sent to the Committee from the UNCCC.

We are delighted to be able to submit further evidence to the Committee on this issue. This note updates our previous submission to the Committee and whilst we are pleased that further progress has been made, we believe that there are still significant issues to be resolved with regard to the UK's intended reservations and interpretative declarations.

#### **Summary of key points:**

Leonard Cheshire Disability commends the UK government on its commitment to disabled people's human rights, as evidenced by its steps towards ratifying the Convention.

We are particularly pleased at the decision to sign the optional protocol.

We are very disappointed, however, at the intention to include reservations, and do not believe that any of the intended reservations or interpretative declarations are necessary or desirable.

#### **1. Leonard Cheshire Disability commends the UK government on its commitment to disabled people's human rights, as evidenced by its steps towards ratifying the Convention**

The Convention is a vitally important document. It is the international community's response to the long history of discrimination, exclusion and dehumanisation of disabled people. The CRPD ensures that the world's 650 million disabled people enjoy the same rights and opportunities as everyone else. It covers the many areas where they have been discriminated against, including access to justice, participation in political and public life, education, employment, health, habilitation and rehabilitation as well as freedom of movement.

The Convention is the first human rights treaty of the 21st century. The UK was one of the states which recognised the need for a disability-specific human rights treaty, and played a leading role in its negotiation. The CRPD was adopted by the United Nations in December 2006, and the UK indicated its strong commitment to ratification by signing it at the first opportunity on 30th March 2007.

Leonard Cheshire Disability is delighted that the UK has now signed the optional protocol and that the decision to ratify the convention has now been taken. This is a major step forward in ensuring disabled people's rights in the UK.

## **2. We are particularly pleased that the UK has now signed the optional protocol**

The optional protocol, giving disabled people additional rights to secure their rights under the CRPD, and to challenge discrimination when they face it, is a hugely important part of the Convention.

We are of course aware that the UK Government has not always chosen to sign up to option protocols, and are therefore delighted that the decision to do so has been taken in this case.

It is critical not only that disabled people's rights are clearly stated in the CRPD, but also that they are enforceable – the optional protocol helps ensure that this is the case. We therefore urge the government to ratify the protocol at the same time as the Convention.

## **3. We are very disappointed, however, at the intention to include reservations, and do not believe that any of the intended reservations or interpretative declarations are necessary or desirable.**

Whilst we appreciate the UK Government's determination to ensure that it is in a position to fully implement and comply with the Convention's provisions, we have been disappointed at the length of time taken to decide to ratify. This prevented the UK from taking part in the election of experts to the UN Committee on the Rights of Persons with Disabilities, the monitoring body for the Convention.

Given the length of time taken to decide to ratify, we are very disappointed that reservations and interpretative declarations are still being proposed, particularly give that article 4.2 that allows for the progressive realisation of economic, social and cultural rights.

Our main reasons for taking this position are the following:

- a) As a matter of equality, the UK should not argue that in some areas disabled citizens do not have the same rights as non-disabled ones.



- b) The CRPD provides international standards; the UK should not guarantee anything less than the standards agreed by many other countries worldwide.
- c) Indivisibility and interdependence of human rights mean that the full realisation of one set of rights depends on the realisation of the others; reserving thus jeopardises the realisation of the government's commitment to equality by 2025 and of its human rights agenda for all British citizens.
- d) Reservations send the wrong signal that the UK anticipates that there will be violations of rights in those areas where it has reservations, and send a signal that the UK is further back than other countries in supporting disabled people's rights.
- e) Withdrawing reservations is a lengthy process.
- f) The elaboration of the Convention was unique in the degree of involvement of disabled persons; reserving on the areas that they identified as requiring to be addressed indicates disregard for the expertise of disabled people.

The Government has proposed reservations or interpretative declarations in the following areas:

- a) **Article 27: reservation in respect of service in the armed forces.** The Government has proposed entering a reservation around employment within the armed forces. In principle this is to maintain the current exemption for the Armed Forces from Part 2 of the Disability Discrimination Act (DDA). Leonard Cheshire Disability does not believe, however, that this reservation is necessary. There is no legal requirement in the Convention to hire personnel unable to do the job they are recruited for; the obligation is to ensure a non-discriminatory and accessible working environment when it is reasonable to do so. As such the reservation is unnecessary and sends an unhelpful negative message about the support that those who acquire an impairment during their service can expect to receive.
- b) **Article 24: interpretative declaration to the effect that the UK general education system includes both mainstream and special schools.** Inclusion is a general principle and a fundamental freedom, and should be aimed at in all areas of life, including education. It is clear that at present some schools are not as accessible to disabled people as they could be, either in terms of physical accessibility or indeed in terms of staff training or attitudes. This means that many parents continue to see the need for specialist education provision. Leonard Cheshire Disability would argue however that the 'progressive realisation' envisaged in the CRPD provides a golden opportunity to set a clear ambition for enhancing and improving all aspects of the accessibility and effectiveness of the mainstream education system to ensure that disabled children genuinely enjoy equal rights and access to a high quality education. Reservations in this area will send out an inappropriate message to schools that they need not actively pursue all possible steps to increase accessibility and choice for disabled pupils.
- c) **Article 24: reservation to the effect that disabled children's needs may best be met by educational provisions outside of their community.** Leonard Cheshire Disability supports parents' right to choose where their children are educated – but at present such choice can be limited for parents of disabled children by continuing inaccessibility



in mainstream schooling. We believe that the key policy direction should be to ensure that all mainstream schools are able to offer the support and accessibility that any disabled pupil would need, progressively reducing the demand for specialist provision. We are concerned that the reservation and declaration send a message that the current status quo is set in stone, undermining the drive to ensure that mainstream schooling provides the right opportunities for all disabled pupils, whatever their impairment.

- d) **Article 18: reservation to retain flexibility in changing immigration rules.** This sends the wrong signal that the government intends to introduce legislation that could violate disabled people's human rights. This is particularly unfortunate when the government has recently dropped similar reservations to the UNCRC. Whilst the Government has argued that the reservation is necessary for very specific circumstances with regards to health screening, Leonard Cheshire Disability is concerned at the potential for this to lead to wider interpretation and potential discrimination towards disabled people within the immigration system. We welcome the proposal to keep the reservation under review, but would argue that the Government has enough powers already to ensure that the reservation is not necessary.
- e) **Article 12.4: reservation on benefits and capacity.** The reservation relates to the safeguards required in the convention for people who require advocates or substitutes, with particular reference to the benefits system. Leonard Cheshire Disability welcomes the suggestion that the Government will work towards implementation of a system to fill this gap. We believe, however, that ratification without reservations and a commitment to progressive realisation on this particular issue would be preferable. We would argue that entering, and subsequently having to remove, a reservation is unnecessary and overcomplicated, although we commend the Government for the determination to resolve this issue.

I hope this submission is helpful. We would be very happy to discuss in more detail any of the points raised in this submission.

### **Memorandum submitted by Northern Ireland Human Rights Commission, dated 23 March 2009**

The Northern Ireland Human Rights Commission (NIHRC) was created by Parliament to exercise the functions of a national human rights institution, which include advising on measures which ought to be taken to protect human rights, and engaging with the UN and regional human rights systems. In that context it is responding to the JCHR's call for evidence on the text of the reservations and interpretative declaration proposed in the Explanatory Memorandum issued by Government to begin the parliamentary process for ratification of the Convention on the Rights of Persons with Disabilities.<sup>68</sup>

The Commission welcomes the reduction in the proposed number of reservations, but regards three of the remaining four, and the proposed interpretative declaration, as undesirable. They have the potential to undermine the international consensus achieved at

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<sup>68</sup> The Explanatory Memorandum of 3 March 2009, and associated documents, are available at: <http://www.officefordisability.gov.uk/working/theunconvention.asp>.

the time of drafting the Convention.<sup>69</sup> The impact of such a range of reservations will be felt well beyond the UK, principally by disabled people; they could encourage other states to restrict access to rights guaranteed by the Convention, and inhibit the interpretation of those rights by the treaty body, the UN Committee on the Rights of Persons with Disabilities.

### Education (Article 24)

Under Article 24, the UK is proposing both a reservation and an interpretative declaration.<sup>70</sup> To deal first with the interpretative declaration, it appears to the Commission to be quite unnecessary. The Article sets out a progressively realisable right, not an immediate entitlement. The interpretative declaration has the potential to be incompatible with the Convention's object and purpose,<sup>71</sup> if the intention or effect is to dilute the requirement on the state to strive progressively to ensure an inclusive education system.<sup>72</sup> The interpretative declaration appears to have the opposite effect to the UK's stated aim in the Explanatory Memorandum:

The United Kingdom is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children.<sup>73</sup>

Since the aim stated in the Explanatory Memorandum appears to accord with the requirements of Article 24 in respect of the progressively realisable right to inclusive education, the interpretative declaration is not needed in order to uphold the principle of parental choice in respect of the education of the child. Without the continued development of an inclusive mainstream sector, to which the state is apparently already

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<sup>69</sup> The NIHRC regrets that despite a number of requests that it be consulted as to the plans in respect of ratification, not least because of its designated role under Article 33(2), its first opportunity to consider the content of the reservations was upon publication of the Explanatory Memorandum.

<sup>70</sup> Interpretative Declaration: "The General Education System in the UK includes mainstream, and special schools, which the UK Government understands is allowed under the Convention." Reservation: "The United Kingdom reserves the right for disabled children to be educated outside of their local community where more appropriate education is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated."

<sup>71</sup> Article 46(1) of the Convention, restating the rule from Article 19 of the Vienna Convention on the Law of Treaties, states: "Reservations incompatible with the object and purpose of the present Convention shall not be permitted." In addition, "Where the effect of a declarative statement relating to a Convention is to exclude or modify the legal effect of the obligations in the Convention, it is considered to be a reservation, regardless of the label adopted by the state" (see JCHR Report on the UN Convention on the Rights of Persons with Disabilities, 4 January 2009, footnote 5). The Joint Committee earlier found that one of the UK reservations to the Convention on the Rights of the Child - the immigration reservation - "read literally would allow the Government to disapply the CRC rights so far as they relate to people who are subject to immigration control. In our view, that would be incompatible with the object and purposes of the CRC, and so would not constitute a valid reservation" (Seventeenth Report of the JCHR on the Nationality, Immigration and Asylum Bill at para.17, 21 June 2002). This reservation has now been removed, see note 15 below.

<sup>72</sup> Article 24 of the Convention states: "In realising this right, states parties shall ensure that... [p]ersons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; [p]ersons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live."

<sup>73</sup> This policy commitment also has a legislative basis; see e.g. the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO). It increased the rights of children with special educational needs to attend mainstream schools and introduced disability discrimination laws for the whole education system in Northern Ireland for the first time. The SENDO presumption is for attendance at mainstream school subject to parental wishes and the efficient education of other pupils. The interpretative declaration tends to undermine that approach and calls into question the long-term policy commitment under SENDO.

committed, the parents of a disabled child are likely to find their ‘choice’ to be more, rather than less, limited.

The Explanatory Memorandum states that the Convention “covers some matters which, under the UK’s devolution settlements, are devolved, and the Devolved Administrations have an interest...”.<sup>74</sup> Education is one of these devolved matters. In addition the Equality Impact Assessment accompanying the Explanatory Memorandum states:

All Government Departments and the Devolved Administrations have had to consider whether their existing legislation, policies, practices and procedures are compliant with the requirements of the Convention...<sup>75</sup>

The Commission understands from discussions with the Minister for Education for Northern Ireland that she did not consider any such interpretative declaration necessary in Northern Ireland and that the Minister did not endorse its application here. This calls into question the extent to which appropriate weight has been given to the outcome of consultation with the devolved administrations in respect of such devolved matters.<sup>76</sup> The JCHR will wish to satisfy itself as to whether the Explanatory Memorandum properly reflects the views of the devolved administrations.

The interpretative declaration is likely to result in considerable criticism of the UK when its first report is examined by the UN Committee on the Rights of Persons with Disabilities two years after ratification. The need for inclusion of disabled children is already the subject of recommendations to the UK from another treaty body. The Committee on the Rights of the Child recommended in September 2008 that the UK

...invest considerable additional resources in order to ensure the right of all children to a truly inclusive education which ensures the full enjoyment to children from all disadvantaged, marginalised and school-distant groups.<sup>77</sup>

The proposed reservation is equally unnecessary.<sup>78</sup> Article 24(c) makes it clear that only “reasonable accommodation of the individual’s requirements” must be provided, and therefore this does not give rise to an absolute right to specific provision at the local level for every individual irrespective of cost. Nevertheless, there is an onus on the state to demonstrate the steps it is taking to work towards full compliance with this progressively realisable right.

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<sup>74</sup> See para 6

<sup>75</sup> See para 12, Equality Impact Statement. The Explanatory Memorandum also states: “In working towards ratification, Departments and the [devolved administrations] have examined their legislation, policies, practices and procedures, notwithstanding the fact that the UK already has robust anti-discrimination and human rights legislation, to ensure that the UK is compliant” (para 12).

<sup>76</sup> The Minister for Disabled People told the JCHR on 18 November 2008: “It is for Departments to determine, just in the same way it is for devolved administrations to determine whether or not they have reservations”; see response to Q.38.

<sup>77</sup> At para 67(b). The Committee also expressed concern that “there is no comprehensive national strategy for the inclusion of children with disabilities into society” (para 52(a)).

<sup>78</sup> The terms of the reservation are unusual and the language is inappropriate: “The United Kingdom reserves **the right for disabled children** [emphasis added] to be educated outside of their local community where more appropriate education is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated.” The Government is here reserving a position to itself, not granting a right to disabled children. In addition, the opportunity for parents to state a preference in relation to the school they wish their child to attend already exists, independently of any treaty, and does not need to be affirmed least of all by way of a reservation.

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

### **Armed forces (Article 27)**

The Commission does not support a reservation in respect of employment in the armed forces,<sup>79</sup> and would like to see a review of the exemption in respect of the armed forces under the Disability Discrimination Act. Removal of the exemption would still permit the state to employ objective and necessary job criteria in respect of service in the armed forces, and to maintain its present practice of seeking where possible to recruit or retain people with disabilities by making reasonable adjustments.

### **Immigration (Article 18)**

Government proposes to review this reservation twelve months after ratification to assess whether or not there is a continuing need for it in practice. Having had several years to develop its position as the Convention was in gestation, there is no need for Government to postpone the matter for a further year: it is already apparent that no reservation is required.<sup>80</sup>

The Explanatory Memorandum does not adequately explain the aim of this reservation.<sup>81</sup> It refers to the possible need to introduce wider health screening “particularly in the event of a global health emergency” if this is considered necessary for the protection of public health. That appears to confuse issues relating to health and those pertaining to disability, whereas it is obvious that global health emergencies affect people with and people without disabilities. The UK already has considerable powers under immigration rules to conduct health screening of those seeking to enter the UK in relation to communicable diseases and the protection of public health.

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<sup>79</sup> The armed forces reservation is set out as follows in the Explanatory Memorandum: “The United Kingdom ratification is without prejudice to provisions in Community law that Member States may provide that the principle of equal treatment in employment and occupation, in so far as it relates to discrimination on the grounds of disability, shall not apply to the armed forces. The United Kingdom accepts the provisions of the Convention, subject to the understanding that its obligations relating to employment and occupation, shall not apply to the admission into or service in any of the naval, military or air forces of the Crown.”

<sup>80</sup> The immigration reservation is set out as follows: “The United Kingdom reserves the right to apply such legislation, insofar as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, as it may deem necessary from time to time.”

<sup>81</sup> This is despite the fact that the Minister for Disabled People told the JCHR on 18 November 2008: “When we publish the explanatory memorandum the Home Office Department will be able to provide the detail”; see para 68, at <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/9/0907.htm>

This proposed reservation appears to be out of step with the recent removal of the similar immigration reservation under the Convention on the Rights of the Child.<sup>82</sup>

No broader human rights impact assessment is provided in respect of this reservation, and its potential adverse impact in relation to ECHR Article 8 with regard to family members seeking to join those already in the UK.

### **Equal recognition before the law (Article 12.4)**

The Commission is content for this reservation to be maintained, for the shortest possible period. It welcomes the fact that the compatibility exercise identified the absence of a review system for benefit appointees, and Government's commitment to establish such a review system in order to ensure compatibility with Article 12.4. The Commission looks forward to this reservation being lifted in the very near future.

### **Equality impact assessment**

The Equality Impact Assessment which accompanies the Explanatory Memorandum states, in relation to the proposed reservations and interpretative declaration, that "the relevant Departments are responsible for carrying out their own equality impact assessments to support their policies".<sup>83</sup> The Commission considers that equality impact assessments ought to be conducted and published by the Departments and devolved administrations in respect of each of the four proposed reservations and the interpretative declaration.

### **Impact assessment and resources**

The NIHR is one of the organisations to be designated as an independent mechanism under Article 33 of the Convention. The Commission has made it clear in all of its discussions with Government that it cannot adequately discharge this additional role without additional resources. The Commission is therefore dismayed at the statement in the Explanatory Memorandum that any costs arising from ratification will be covered within existing funding.<sup>84</sup> This is repeated in the Impact Assessment: the expectation is "that any costs incurred will be met from their existing funding".<sup>85</sup>

The Commission's funding, resources and functions have not been subjected by Government to any audit or analysis to ascertain the feasibility of absorbing the extra workload. The Commission cannot meet this new task within existing resources without

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<sup>82</sup> The reservation under Article 22 of the Convention on the Rights of the Child was withdrawn just after the examination of the third and fourth UK periodic reports in September 2008. It was in very similar terms to that proposed under the Disability Convention, as follows: "The United Kingdom reserves the right to apply such legislation, in so far as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, and to the acquisition and possession of citizenship, as it may deem necessary from time to time." The redundancy of such reservations was pointed out by the NGO Justice some years ago in a review of UK reservations to international human rights instruments: "...reservations to human rights treaties are not necessary as human rights do not confer a right to immigration per se, they confer rights to have applications assessed fairly and to be treated properly in accordance with human rights principles" (<http://www.liberty-human-rights.org.uk/pdfs/policy02/interventions-dec-2002.pdf>).

<sup>83</sup> See para 21

<sup>84</sup> See para 14

<sup>85</sup> Office for Disability Issues: Impact Assessment on ratifying the UN Convention on the Rights of Persons with Disabilities, 23 February 2009 (accompanying the Explanatory Memorandum of 3 March 2009), bullet point 4, p.4.



that impacting negatively on the rest of its work to protect human rights in Northern Ireland, especially given the requirement, which the Commission welcomes, to engage directly with disabled people in carrying out its Article 33 role. Obliging the Commission to set aside other priorities to fulfil this new role is an interference with its independence. **The Commission would welcome a statement from the JCHR on the resourcing of the NIHRC to carry out its Article 33 role.**<sup>86</sup>

### Memorandum submitted by Rescare, dated 19 March 2009

We note your Committee's proposal to examine the Government's ratification on the UN Convention on Rights of Persons with Disabilities this Spring including its interpretive declarations and reservations particularly in respect of the Convention's Article 24: Education.

Run by families for families of children with learning disabilities and autism we fully support the Government's proposed ratification of the UN Convention with Reservations to its Article 24: Education, and, as requested, respond as follows:

The Department for Children, Schools and Families has quite rightly, we feel, indicated that there is a need to recognise that the general education system in the UK includes a range of provision, including mainstream and special schools which will require an interpretative declaration, and there will also need to be a reservation in respect of disabled children whose needs are best met through specialist provision, which may be some way from their home. We consider that the reservations are essential in meeting the needs of children and young people with learning disabilities, autism and other complex needs as an option for their parents. We fully support the statement 6th May 2008 by the then Minister for the Disabled Anne McGuire on behalf of the Government as above.

Our National Petition "*For Parents the Right to Choose a Special School*" produced over 11,000 signatures and an Early Day Motion on our behalf by Ann Winterton MP No. 2383 "*Special Schools and Parental Choice*" was signed by 103 MPs.

Far from assuming a fall in the numbers of children requiring special schools recent forecasts expect increased numbers of children with learning disabilities and/or autism over the next few decades of some 3% to 5% who will surely require further developed properly resourced mainstream, special day and residential schools.

It should not be a case of one type of school versus another but a comprehensive educational service with each option having a part to play. Since when were Universities considered segregational?

The Report of the Schools Working Group 2003 said: "*In the coming years we see special schools as being, along with others, at the leading edge of the government's wider education agenda. We see them participating in the full range of Government initiatives and at the forefront of the wider education agenda. We see all types of special school – maintained, non-maintained and independent – working as equal partners with LEAs, mainstream*

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<sup>86</sup> See UN Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities which states at chapter 7: "National Human Rights Institutions which already exist should be given the human and financial resources needed so that they can effectively monitor the Convention"; <http://www.un.org/disabilities/default.asp?id=245>.



*schools, and other individuals and providers within health and social services. We see more head teachers and teachers choosing to join the sector because of the opportunities that are on offer, and because the sector is one with a secure and long-term future. Special schools have much to offer the wider education, health and social services communities, and it is time for their unique contribution to be recognised and valued.”*

A letter received by a RESCARE supporter from David Congdon, Mencap confirmed its full support for the Government’s decision to sign up to the UN Convention but with a reservation in respect of disabled children whose needs are best met through specialist provision and the right of parents to have the right to choose a special school. See Annex A.

We ask that your Committee takes an holistic approach beyond just the physical and considers positively the actual content of the Government’s Reservations to Article 24: Education. It is this which opponents are apparently reluctant to give air space to in seeking carte blanche rejection of the reservations by omitting the operative information relevant to their inclusion.

Successive Government’s have upheld Parental right to choose the school that they regard as most suited to serving the educational interests of their children who they know best including mainstream, special day and residential schools. We hope that your Committee will give a full and positive response to our submission and thank you for the opportunity to so present it.

### **Memorandum submitted by Simon Burdis, dated 19 March 2009**

I wish to make a submission to the Joint Committee on Human Rights in respect of the UN Convention on the Rights of Persons with Disabilities (the UN Disability Convention).

I understand that your Committee is to examine the Government’s response and the proposal for ratification of the UN Disability Convention but only with interpretive declarations and / or reservations (opt-outs) particularly in respect of the Convention’s Article 24: Education.

I fully support the Government’s proposal to ratify the Convention with certain reservations / interpretive declarations to Article 24: Education, as it is essential that the right of children and young people with special needs, learning disabilities, autism and other complex needs; and their parents / family carers; to choose a special school education is preserved and upheld.

It does not matter how inclusive and accessible mainstream schools are made, a substantial proportion of children need the dignity and expertise of a special school environment whether provided by the State (local authority), independent, voluntary or charitable sector according to need. Where a local area does not have a range of appropriate mainstream and special school provision of different kinds to meet different needs available, it is especially important that parents and family carers retain the right to be able to choose appropriate special school and other specialist provision outside their own area. Inclusion is not achieved by closing or blocking access to the special school or other specialist provision that families need.

Where I mention the right to access special schools, this should also be taken to include the right to access special college provision.

Similarly, for adults with special needs, learning disabilities, autism and other complex and multiple conditions, they and their parents / family carers must be allowed to access a range of housing and care provision of different types to meet different needs. I note that the UN Convention also seeks to promote independent living for adults with disabilities.

My younger brother who is deafblind and autistic, who also has learning disabilities, epilepsy, a heart condition and osteoporosis, and is also without speech or sign language; will never be able to live independently within the terms envisaged. He needs specialist, twenty-four hours a day, seven days a week care and will never be independent in the way that some extreme disability rights campaigners propose. Unfortunately, many of these extreme inclusionists simply do not understand the needs of people with complex, profound and multiple learning disabilities such as my brother.

It is essential that a range of different types of provision is made available in every area, including independent living, supported living, village / intentional communities and residential care of different types to fit different needs. It is important that people with disabilities and other special needs and their families are able to choose such specialist provision outside their own local area, especially where a full range of different types of housing and care is not available locally.

I believe that the reservations / interpretive declarations are essential and should be drafted so as to ensure all the choices outlined above.

### **Memorandum submitted by the UN Convention Campaign Coalition, dated 20 March 2009**

The UN Convention Campaign Coalition welcomes this further opportunity to submit written evidence to the Joint Committee on Human Rights, regarding the Government's ratification of the UN Convention on the Rights of Persons with Disabilities. We commend the Committee for investigating such an important issue, given recent debate over the intended reservations and interpretative declarations tabled by the Government. We are worried that at the time of writing the Government has made little progress in relation to the concerns we raised in our last written submission of November 2008 and hope that the Joint Committee will take this opportunity to highlight to negative effects that reservations will inevitable have on the everyday lives of disabled people and their families.

#### **UN Convention Campaign Coalition**

The UN Convention Campaign Coalition (UNCCC) was formed in December 2007 and is a coalition of thirty-three organisations who are united in their aim to ensure that the UN Convention on the Rights of Persons with Disabilities (UNCRP) is **fully** ratified.

#### **Reserving on Disabled People's Rights**

In our last correspondence with the JCHR in November 2008 we noted that the then Minister for Disabled People, Anne McGuire MP, was hoping that the UK would ratify the Convention by December 2008. However it seems that support for such an ambition was

not shared by her colleagues in Whitehall and in the three months that followed much debate ensued over the Government's intention to table reservations on articles of the convention. The eventual task was left to her successor, Jonathan Shaw MP on 4th March 2009 to lay before parliament the Explanatory Memorandum and Command Paper for ratification of the UNCRPD. The Explanatory Memorandum contained four reservations and an interpretative declaration on articles in the convention.

The Explanatory Memorandum, in the Government's response (March 2009) to the JCHR writes that the '*Government agrees with the Committee that ratification will send a strong and positive message to all disabled people in the UK and abroad – and to those who are not disabled – that the Government takes equality and the protection of human rights for disabled people seriously.*' In tabling the reservations and interpretative declaration the UNCCC believe that the Government has indeed made a strong statement about their position in relation to the equal rights, status and citizenship of disabled people. In tabling reservations the Government has failed in its commitment to ensure all disabled people enjoy the same human rights as any other citizens.

### **The Armed Forces (Article 27)**

The Explanatory Memorandum has outlined that the Government will reserve on Article 27 of the convention as service in the armed forces is exempt from the employment provisions under the Disability Discrimination Act (DDA). The Government claims that it is reserving on this article because it needs to ensure that we have the military personnel 'to meet a worldwide liability to deploy' and to ensure that 'military health and fitness remain matters for Ministry of Defence Ministers based on military advice, not for the courts'.

The UNCCC notes that the armed forces have already publicly acknowledged that their main reservation with the convention is that they should not be obliged to recruit disabled people. However, the armed forces are already retaining service men and women who become disabled when on active service. Furthermore neither the DDA nor the UNCRPD places a duty on any employer to employ an unqualified disabled person. The obligation is to ensure a non-discriminatory and accessible working environment *when it is reasonable so to do*. We do not think that a war zone would be a reasonable environment for a blind or deaf person (for example). In this sense the reservation is unnecessary and as such stands as a symbolic statement on the rights of disabled people.

### **Immigration & Public Health (Article 18)**

The Government has tabled a general reservation on article 18, which the Government argues is in order to retain the right to apply immigration rules and to retain the right to introduce wider health screening for applicants entering or seeking to remain in the UK. The reservation will allow the Government to further refuse entry to disabled persons on the grounds of infectious disease. They claim that this is necessary in order to retain the right to apply immigration rules and to retain the right to introduce wider health screening for applicants entering or seeking to remain in the UK, if this is considered necessary to protect public health. The Explanatory Memorandum for this reservation notes that it will be subject to review twelve months after the UK has ratified the convention in order to assess whether there is a continued need for it in practice.

The UNCCC believes that the Government are conflating the issues of disability and disease. We note that the Government already has the power to quarantine people and transportation if there is evidence of infectious disease. As such UNCCC believes that this reservation is unnecessary, confusing as it conflates disability and disease and recommends that the Government remove this tabled reservation, rather than reviewing it twelve months after ratification. Moreover the Government has previously indicated to the UNCCC that the reservation would be made on public health grounds, however we are concerned that the wording of the reservation will be interpreted as relating to all immigration and asylum procedures. The UNCCC furthermore notes that the wording of this reservation is similar to that the reservation the Government made to the UN Convention on the Rights of the Child (UNCRC). This reservation has recently been withdrawn by the Government in September 2008. To propose a similar reservation once again seems to be contradictory. Our main area of concern is that if the tabled reservation remains it may be used over and above measures non-disabled people are subjected to, to refuse entry to disabled people or reject disabled asylum seekers.

#### **Benefits & Guardianship (Article 12.4)**

The Government have tabled a proposed reservation in relation to article 12.4, which concerns safeguards for the exercise of substituted decision-making. The article includes a requirement for regular review by a competent, independent and impartial authority or judicial body, however the Government argues that there is currently no review system for Department for Work and Pensions (DWP) appointees. These appointees refer to people who are appointed to claim and collect benefits on behalf of another person due to that person's lack of physical or mental capacity on behalf of some half million claimants currently.

Previously UNCCC argued that the DWP should focus on changing its procedures to accommodate the independent review process, rather than propose this new reservation. We therefore welcome the Government's Explanatory mechanism, which notes that the DWP is '*actively working towards a proportionate system of review to address this issue*'. UNCCC believes that this renders the reservation unnecessary and without meaning, as in our view as it is clearly a statement of the Government's intention to progressively realise this right. In light of this we believe that the reservation should be removed to avoid further confusion and to ensure disabled people will realise their rights under this article.

#### **Inclusive Education (Article 24)**

The Government has outlined that it is making an interpretative declaration on article 24 of the UNCRPD which relates to inclusive education for disabled children and young people. An interpretative declaration is proposed to make clear that the UK general education system includes both mainstream and special schools, thereby clarifying how the UK Government interpret the convention. This will make it clear that special schools are considered part of the UK's general education system and that parents have the right to express a preference for a special school. A reservation is proposed to allow for circumstances where disabled children's needs may be best met through specialist provision, which may be some way from their home; so they will need to be educated outside their local community. This also maintains parental choice for schools outside the local community.

The UNCCC believes that the Convention provides an opportunity to take proactive steps to improve access to mainstream education so parents have a genuine choice in schooling their child.

We are concerned that the government is not taking a balanced approach in its promotion of the principle of parental choice and is in danger of completely ignoring the interests of disabled children. Parental choice needs to be balanced with the potentially damaging effects of disabled children being educated away from their local communities and the rights of children to family life.

The Council for Disabled Children in their recent policy document on Inclusion make clear that the entire voluntary sector supports a move towards developing more inclusive provision. UNCCC do not regard segregation and separation in special settings inclusion. We believe that in interpreting inclusion in this way the Government is at risk of debasing the concept and further confusing authorities. It is clear that many more parents of disabled children would choose a mainstream school if they were confident that it could meet their child's needs. Whilst mainstream schools have only a poorly enforced duty to admit disabled pupils and have no clear financial (or other) incentive or encouragement to develop inclusive practice, the situation will not improve. UNCCC is aware of evidence that demonstrates that an increasing number of mainstream schools are including a widening diversity of disabled children when the ethos and leadership are there. The reservation acts as a significant disincentive for schools to pursue inclusion.

In this sense ratifying the Convention would help increase inclusive options and help rather than hinder the Government's ability to comply with its own policy on parental choice. This is supported by a 2006 Ofsted report looking at the impact on pupil attainment in different educational settings, which concluded that disabled children do better in resourced mainstream schools compared to any other setting, further evidencing the benefits of an inclusive approach.

Furthermore the UNCCC is concerned that by putting an interpretative declaration on article 24, the Government will be undermining its previous commitments towards inclusive education. Like most countries in the world the UK supports the Salamanca Statement. The statement, drawn up by a UNESCO world conference held in Salamanca in Spain in 1994, called upon all Governments to 'adopt as a matter of law or policy the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise'. Similarly, Section 316 of the Special Educational Needs and Disability Act (SENDA) 2001, the Statutory Guidance issued in 2001 on Inclusive Schooling and the SEN Strategy 2004 are all underpinned by a principle of inclusive education.

Other developed countries with similar education infrastructures to the UK have ratified Article 24 in full, including Australia, New Zealand, Austria, Germany Spain and Sweden. The UK has to date provided significant leadership on human rights on the international stage and the UNCCC believe that entering an interpretative declaration and reservation on article 24 risks undermining this leadership, reputation and will consequently have a negative impact on ability of disabled children and young people to enjoy other rights under the convention.



## Regression Not Progression

The UNCCC are adamant that reserving or tabling an interpretative declaration on any part of the Convention is not compatible with the UK Government's commitment of achieving disability equality by 2025 and their longstanding commitments to the individual human rights of all their citizens. By ratifying the Convention with reservations the UK government are declaring its willingness to accept less than the agreed international standard for the protection of the human rights of disabled people in the UK. In tabling reservations and an interpretative declaration, the implementation of the Convention in protecting the human rights of disabled people will not apply in its entirety to the UK.

In its response to the first JCHR report, the Government writes that '*early ratification should take precedence over continuing to debate the small number of reservations and interpretative declarations which remain necessary.*' This they say is a view which has been expressed by the Disability Committee of the Equality and Human Rights Commission. UNCCC believe that the way in which the Government has dismissed these '*small number of reservations and interpretative declarations*' demonstrates a fundamental ignorance of the life chances of disabled people and worrying disregard for disabled people's equal citizenship in the UK. The elaboration of this Convention was unique in having disabled people from all over the world fully involved in the process. As a result, the Convention outlines precisely those areas that we know, from our direct experience, where we need protection from violations.

Reserving on any of these areas indicates a disregard of the rights, expertise and views of disabled people. Moreover the Government's insistence to press ahead with the ratification whilst upholding the aforementioned reservations and interpretative declaration demonstrates their intent to ignore the concerns raised previously by the Joint Committee on Human Rights in November 2008, the 50,000 UK residents who signed the UNCCC petition calling for ratification without reservation and advocacy from Disabled People's Organisations. Interestingly, the Equality & Human Rights Commission (EHRC) have put out a statement making a very similar argument about why these reservations are unnecessary and go against the aspirational spirit of the Convention.

Human Rights are universal and indivisible. Ratification of this convention, whilst demanding duties and obligations on Member States, does recognise the need for progressive implementation. In the UK we already have the DDA and the Human Rights Act to support our rights as well as obligations under all the other international human rights instruments. It is our belief that reservations are an indication in themselves that the UK is prepared to continue to violate disabled people's rights in certain areas of our lives. Whilst the Government asserts in its response that '*entering reservations and/or interpretative declarations does not of itself imply any fundamental lack of respect for human rights*', UNCCC believes that it does represent a significant lack of ambition for improving the life chances of disabled people and meeting the disability equality target if 2025.

The UNCCC believes that the measures for progressive realisation as set out in the UNCRPD are sufficient for the Government to remove the proposed reservations and interpretative declaration. For those of us who are committed to the full enjoyment of human rights for disabled people, reservations break the universality and indivisibility of



the Convention. As supporters of human rights, the UK should not be seeking to say that they only support certain rights and not others.

### **Delayed Ratification**

As previously noted, the UNCCC are concerned about the delay in moving towards the full ratification of the UNCRPD. The UK Government had been very proactive in the elaboration of the Convention, had taken a leading role within the Europe delegation to ensure implementation and had at all times listened to and promoted the views and expertise of disabled people. UNCCC is particularly saddened that the UK has taken so long to table the ratification as the UK has now missed the opportunity to be part of the Committee on the Rights of Persons with Disabilities who will oversee implementation of the Convention at a Conference of State Parties.

For a state which was so well represented during the elaboration process, we are disheartened that the UK is missing out on a real opportunity to take a leading role in monitoring the implementation of the convention. Like all UN human rights instruments, the UNCRPD is not just a legal tool; it sets out an international cross-cultural moral standard for the treatment of disabled people. It effectively articulates a moral code of behaviour by which states, Governments, public bodies and all human beings should follow toward disabled people. In delaying the ratification of the Convention and tabling the proposed reservations and interpretative declaration the Government appears to the international community to be faltering at this important moment of equal human rights for disabled people.

### **Disabled People need this Convention**

As we have noted previously, despite the implementation of the Disability Discrimination Act, the Human Rights Act and the Improving the Life Chances of Disabled People report, disabled people's rights are still routinely and systematically violated. This situation is set to become more critical given the changing demographics of Britain. Advances in medical science and technology mean that many more disabled children born with complex impairments are reaching adulthood. At the other end of the age spectrum people are living longer, often with age-associated impairments. The population projections for 2031 predict that 15.3 million of the population will be over 65 (compared with 11.4 million in 2006). As the proportion of the UK population living with an impairment or long-term health condition increases the need to secure a level playing field for this growing group of citizens becomes increasingly urgent.

The Convention is the first human rights instrument to be absolutely clear about disabled people's right to be treated as full and equal human beings. Although disabled people should be considered as fully human under the pre-existing conventions, we were not specifically mentioned (except in the Convention on the Rights of the Child) and therefore our rights have historically been ignored, marginalised and abused. The Convention can be used at all levels as further evidence that disabled people must be included in the rights agenda – and shows exactly what that means for local and national statutory authorities. Moreover it can be used for responses to local and national policies that affect disabled people. This is extremely pertinent given the UN Committee on the Rights of the Child's recent (2008) criticism in its concluding observation of the Government's lack of any

*‘comprehensive national strategy for the inclusion of children with disabilities (sic) into society’.*

Local authorities, Government departments, NHS Trusts, and all public bodies can adopt it as part of their Disability Equality Schemes and as the basis of their Disability Equality duty. It can be used as evidence to prove a violation in any case taken in relation to either the DDA or the Human Rights Act – and, for instance, in arguments with the Crown Prosecution Service if they consider it impossible to take a case because of the level of someone’s impairment. Because the Convention goes into the details of what makes effective human rights protection for disabled people, it is an excellent support to training both non-disabled and disabled people in our rights and equality. For the first time, an international document has clearly spelt out our humanity and recognises, officially, that disability is a social response not a personal fault. Furthermore it ensures that disabled people another avenue of redress if their rights are being breached in the UK. On this point UNCCC have welcomed the signing of the optional protocol and are encouraged by the Government’s proposal to ratify it.

Given the relatively short time of the tabling of the proposal to ratify the convention and the ratification itself, UNCCC urge the JCHR to take immediate action by interrogating further the Government’s proposed reservations and interpretative declarations with the intension to remove them.

Should the JCHR require any further information relating to the points raised by the UNCCC, we would be more than willing to provide either written or oral evidence.

This submission has been agreed by all members of the UNCCC.

## List of Reports from the Committee during the current Parliament

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First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	HL Paper 10/HC 92
Third Report	A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145
Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204
Fifth Report	Counter-Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2009	HL Paper 37/HC 282
Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09	HL Paper 46/HC 315
Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320
Eighth Report	Legislative Scrutiny: Coroners and Justice Bill	HL Paper 57/HC 362
Ninth Report	Legislative Scrutiny: Borders, Citizenship and Immigration	HL Paper 62/HC 375
Tenth Report	Legislative Scrutiny: Policing and Crime Bill	HL Paper 68/HC 395
Eleventh Report	Legislative Scrutiny: 1) Health Bill and 2) Marine and Coastal Access Bill	HL Paper 69/HC 396
Twelfth Report	Disability Rights Convention	HL Paper 70/HC 397
Thirteenth Report	UK Libya Prisoner Transfer Treaty	HL Paper 71/HC 398

### Session 2007-08

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I

Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378
Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee's First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380
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