



House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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# The UN Convention on the Rights of Persons with Disabilities

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**First Report of Session 2008-09**

*Report, together with formal minutes and oral  
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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## Summary

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The UN Convention on the Rights of Persons with Disabilities (UNCPRD) was agreed in December 2006 and came into force on 3 May 2008. The Convention builds on existing international human rights instruments to “promote, protect and ensure the full enjoyment of all human rights and fundamental freedoms by all persons with disabilities”. The UK was closely involved in negotiating and agreeing the UNCPRD and was one of its first signatories.

We see clear benefits in UK ratification, particularly because it sends a strong signal that the Government takes equality and the protection of human rights for people with disabilities seriously. Although we have applauded the Government’s commitment to the UNCPRD we make a number of specific criticisms in this Report:

- The Government intended to ratify by the end of 2008 but missed its deadline.
- A number of reservations and interpretative declarations – which would limit the effect of the UNCPRD in the UK – are under discussion within Government. These emerged at a relatively late stage and the Government has chosen not to publish draft texts. We doubt whether any of the proposed reservations and interpretative declarations are necessary and compatible with the Convention, but we have been unable to reach a final conclusion because of the absence of published drafts.
- It is not clear whether anyone within Government has challenged the necessity of the proposed reservations and interpretative declarations or their compatibility with the UNCPRD.
- There has also been insufficient consultation with disabled people and their organisations about the proposed reservations and interpretative declarations.

We call on the Government to publish the draft texts of the proposed reservations and interpretative declarations and to consult disabled people and their organisations about whether they are necessary and compatible with the Convention. We suggest that the Government can do this and still meet its new target of ratification by Spring 2009. The UK should ratify the UNCPRD as soon as possible. If the Government considers that reservations or interpretative declarations are necessary they should be fully explained and justified, to allow for effective scrutiny.

We also recommend that the UK should sign and ratify the Optional Protocol to the Convention which would provide for a right of individual petition to the UN committee which monitors the UNCPRD.



# 1. Introduction

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1. The UN Convention on the Rights of Persons with Disabilities (UNCRPD) came into force on 3 May 2008. The Optional Protocol (which provides for individual petitions alleging a violation of the Convention by a State Party to be considered by the Committee on the Rights of Persons with Disabilities) entered into force on the same day as the Convention. The Government was closely involved in the negotiation and agreement of this Convention and was one of its first signatories, signing on the day the Convention opened for signature.<sup>1</sup> Although the UK has signed, it has not yet ratified the Convention.<sup>2</sup>

2. The monitoring body for the Convention, the Committee on the Rights of Persons with Disabilities, was elected after the first meeting of the Conference of State Parties (which took place on 3 November 2008). Twelve members of that Committee have been elected, although a further six members will be appointed after 80 states have ratified the Convention. Only States that have ratified the Convention were able to participate in the formation of this monitoring body, including by proposing or electing Committee members.

3. We examined the UNCRPD during our recent inquiry into the human rights of adults with learning disabilities. We concluded that the Convention presented a “valuable opportunity to confirm that disabled people, including adults with learning disabilities, are entitled to respect for their human rights.” We recommended that the UK ratify the Convention without delay.<sup>3</sup>

4. In May 2008, in response to our Report, the then Minister for Disabled People, Anne McGuire MP, confirmed that the Government intended to ratify the Convention by December 2008. However, the Government indicated that it was considering several reservations to the UNCRPD, including in respect of service in the armed forces, immigration and education.<sup>4</sup>

5. Reservations or interpretative declarations are statements that a State makes on signing or ratifying an international treaty which, in short, may limit the effect of that treaty.<sup>5</sup> Article 46 UNCRPD permits reservations to the Convention only in so far as they are compatible with the object and purpose of the Convention.

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<sup>1</sup> The Convention was agreed on 13 December 2006 and opened for signature on 30 March 2007.

<sup>2</sup> Ratification of the Convention would make the UK a full party to the obligations in the Convention. Ratification will not incorporate the Convention into domestic law in the UK, but domestic courts would, following the common law, take the provisions of the Convention into account when interpreting domestic law.

<sup>3</sup> Seventh Report of Session 2007-08, *A Life Like any Other?: Human Rights and Adults with Learning Disabilities*, HL Paper 40-I/HC 73-I, paragraphs 62 - 70. More information about the Convention can be found in this recent report, See for example, Annex 1.

<sup>4</sup> Cmd 7378, Government Response to the Joint Committee on Human Rights Report, *A Life Like Any Other? Human Rights and Adults with Learning Disabilities*, pages 4-5; See also <http://www.officefordisability.gov.uk/docs/UN-Convention-on-Disability-Rights.pdf> [Last accessed 16 December 2008].

<sup>5</sup> 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 Article 2(1)(d), Vienna Convention on the Law of Treaties, 1969. See for example, General Comment 24, Office of the High Commissioner for Human Rights, Issues relating to reservations made on ratification or accession to the Covenant (ICCPR), 4 November 1994 CCPR/C/21/Rev.1/Add.6, paragraph 3.

6. On 28 August 2008, we wrote to the then Minister for Disabled People to ask for further information on progress towards UK ratification of the Convention.<sup>6</sup> We specifically asked for:

- details of each and every reservation or interpretative declaration being considered by the Government and the reasons for them;
- how each reservation could be considered compatible with the object and purpose of the Convention;
- how the Government was working with the European Community (which is also a signatory to the Convention) on ratification;
- what barriers existed in domestic law to ratification and whether the Government intended to publish the results of its internal review of the compatibility of existing domestic legislation and administrative practice;
- whether a recent decision of the House of Lords, which narrowed existing protection for people with disabilities (*Malcolm*) rendered our existing domestic anti-discrimination legislation incompatible with the requirements of the Convention, and if so, whether the government intended to bring forward a remedy;<sup>7</sup> and
- whether the Government had identified any benefits of, or barriers to, ratification of the Optional Protocol which accompanied the UNCRPD.

7. The then Minister responded on 24 September 2008.<sup>8</sup> She said:

“The process involved in ratification is both a very complex and a very challenging one. It is my intention to make a further announcement on progress after Parliament has resumed in October. We are still considering the implications of the work that needs to be done and I will indicate my expectations for the timetable then.”

8. She outlined the Government’s view on a number of issues and promised to write again with a more detailed response, explaining that:

- Reservations or interpretative declarations to the Convention were being sought by the Ministry of Defence, the Home Office and the Department for Children, Schools and Families. Discussions were continuing in respect of the exercise of legal capacity and in respect of cultural services (interpretative declarations were being considered).
- Although the Office for Disability Issues (ODI) was coordinating the UK ratification, individual departments have been responsible for their own positions on reservations and interpretative declarations. Full rationale would not be provided until the final package was announced. This would be in the final Explanatory Memorandum laid before Parliament immediately before ratification.

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<sup>6</sup> Ev 16, Ev 19

<sup>7</sup> *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* [2008] UKHL 43

<sup>8</sup> Ev 19, Ev 21



- The Government did not underestimate the importance of the House of Lords decision in *Malcolm*. If legislative measures were necessary, a consultation would take place before any remedial measures were included in the forthcoming Equality Bill.
- The UK traditionally saw “little practical benefit” in the right of individual petition. Explaining this comment, the Minister said “decisions of the relevant UN Committee are not binding and are not, therefore, equivalent to judicial decisions.”
- The Government proposed to appoint the Equality and Human Rights Commission (EHRC), the Scottish Human Rights Commission, the Northern Ireland Equality Commission and the Northern Ireland Human Rights Commission as parts of the national independent monitoring mechanisms required by Article 33 of the Convention.

9. In the light of this new position, and the fast approaching December 2008 deadline, we decided to call the new Minister for Disabled People, Jonathan Shaw MP, to give oral evidence. We published our correspondence and issued a call for evidence on 14 October 2008. We asked for submissions on:

- timetable for ratification;
- proposals for reservations and interpretative declarations;
- ratification of the UN Convention by the European Community;
- compatibility of existing UK laws and practices with the UN Convention; and
- ratification of the Optional Protocol and the right to individual petition.

10. We received a significant number of submissions from individuals, organisations of disabled people and for disabled people (and coalitions of NGOs), the EHRC and the Department for Children, Schools and Families (DCSF). We publish these, together with our correspondence with the Government and others, with this Report. We took oral evidence from Jonathan Shaw MP, Minister for Disabled People, on 18 November 2008.

11. Both we and our predecessor Committee have often commented on the need for greater parliamentary scrutiny of treaties with significant human rights implications before they are ratified by the Government.<sup>9</sup> We welcome the Government’s recent commitment to enhancing parliamentary scrutiny of international treaties prior to ratification.<sup>10</sup> We hope to demonstrate in this Report the importance of parliamentary scrutiny in ensuring that the process leading to ratification of treaties by the Government is transparent, accountable and informed by the views of those who will be most directly affected.

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<sup>9</sup> See for example Twenty-third Report of Session 2005-06, *The Committee’s Future Working Practices*, HL 239/HC 1575; First Report of 2006-07, *The Council of Europe Convention on the Prevention of Terrorism*, HL 26/HC 247; Nineteenth Report of Session 2005-06, *Work of the Committee in the 2001-2005 Parliament*, HL 112/HC 552

<sup>10</sup> Cm 7170, *The Governance of Britain*, July 2007; Cm 7342-II, *Draft Constitutional Renewal Bill*, March 2008.

## 2. The Convention

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12. The UN Convention on the Rights of Persons with Disabilities builds on existing human rights treaties including the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. The UN Handbook for Parliamentarians on the Convention stresses that it is not intended to create new rights, but “clarifies the obligations and legal duties of States to respect and ensure the equal enjoyment of all human rights by all persons with disabilities”.<sup>11</sup> Its purpose is to:

“Promote, protect and ensure the full enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

13. Article 1 sets out the general principles of the Convention which include: “non-discrimination,” “equality of opportunity,” “respect for difference and acceptance of persons with disabilities as part of human diversity and humanity” and “full and effective participation of persons.” The first principle is that there shall be:

“Respect for the inherent dignity, individual autonomy, including the freedom to make one's own choices, and independence of persons.”

14. The Convention covers a mixture of civil and political and economic, social and cultural rights. These include equality and non-discrimination (Article 5), the right to life (Article 10), respect for privacy (Article 22), respect for home and the family (Article 23), the right to education (Article 24) and the right to the enjoyment of the highest attainable standard of health (Article 25). Article 19 provides for the right of “living independently and being included in the community.” The economic and social rights protected in the UNCRPD are subject to the principle of progressive realisation within available State resources (Article 4).<sup>12</sup> We consider some of the provisions of the Convention, including the potential impact of the principle of progressive realisation, in greater detail below.

15. States are expected to be proactive in ensuring that the rights set out in the Convention are respected. For example, Article 4 requires States to take steps to “ensure and promote the full realization of all human rights and fundamental freedoms” of disabled people “without discrimination of any kind on the basis of disability”. A wide range of actions is listed. These include adopting legislative and other measures for the implementation of the rights under the UNCRPD and modifying existing laws, regulations and practices that constitute disability discrimination. Governments will be required to “consult closely with and actively involve” disabled people. Governments will also be required to promote training on the Convention for staff and professionals who work with disabled people.

16. To date, 137 States have signed the Convention (including the UK) and 43 States have ratified it. The Optional Protocol to the UN Disability Rights Convention provides for individuals to submit complaints about alleged violations of their rights under the Convention to the Committee on the Rights of Persons with Disabilities. Currently the Optional Protocol has been signed by 80 States and ratified by 25 of those.

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<sup>11</sup> United Nations, *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, October 2007, No 14-2007.

<sup>12</sup> We discussed the principle of progressive realisation in our recent report on a Bill of Rights for the UK. See Twenty-ninth Report of Session 2007-08, *A Bill of Rights for the UK?*, HL Paper 165-I/HC 150-I, paras 170 – 173.

## Benefits for people with disabilities

17. The UK was among the first countries to sign the Convention on 30 March 2007. In the press notice issued when she signed the Convention, Anne McGuire MP, the then Minister said:

“I am proud to be able to sign the Convention for the UK, thus honouring the Prime Minister’s expressed hope given in December 2006 to be among the first countries to sign the Convention. But it’s not just our citizens who will benefit from this. There are around 650 million disabled people worldwide who stand to see an improvement in their lives too - especially in the developing world where 80% of the world’s disabled population live.

Prejudice against disabled people is unfortunately still far too prevalent and although we still have a long way to go in changing attitudes, this Convention at last puts disabled people’s human rights on an equal footing with everyone else’s.”<sup>13</sup>

18. Witnesses generally accepted the benefits of ratification of the Convention.<sup>14</sup> The principal benefit cited was the message that ratification of the Convention would send to disabled people in the UK and abroad that their rights were being taken seriously by the UK Government. The UN Convention Campaign Coalition, a group of over 25 disability organisations, told us that the Convention presented the first clear international statement that disabled people had the right to be “treated as full and equal human beings”.<sup>15</sup> The EHRC told us the UNCRPD:

“Offers a major opportunity to achieve a paradigm shift in the way disabled people are perceived and treated across the world, from objects of charity and welfare to equal human beings with the full set of rights that confers.”<sup>16</sup>

19. A number of witnesses referred to the symbolic significance of the drafting, signature and ratification to people with disabilities and to the creation of an international, cross-cultural moral standard for the treatment of people with disabilities.<sup>17</sup>

20. A few witnesses referred to the practical benefits which ratification could bring, including (a) providing clear guidance for policy makers on the treatment of disabled people;<sup>18</sup> (b) supporting claims under the Disability Discrimination Act 1995 (as amended) (DDA) or the Human Rights Act (HRA);<sup>19</sup> (c) supporting training for individuals and NGOs in rights and equality for disabled people;<sup>20</sup> and (d) instilling a sense of pride and ownership by disabled people of their rights and in the international ‘human rights-lobby’.<sup>21</sup>

<sup>13</sup> Office for Disability Issues, Press Notice, 30 March 2008.

<sup>14</sup> See for example, Ev 21 para 1; Ev26 para 1; Ev 27 para 1.2; Ev 31 para 1; Ev 33 para 1, Ev 36 para 1.6; Ev 54, Ev 57, Ev 64, Ev 65, Ev 67.

<sup>15</sup> Ev 54

<sup>16</sup> Ev 39 para 1.6.

<sup>17</sup> See for example, Ev 54, Ev 34, Ev 55, Ev 27.

<sup>18</sup> Ev 39, Ev 65.

<sup>19</sup> Ev 21 paras 1-2; Ev 54; Ev 55.

<sup>20</sup> Ev 54, Ev 55.

<sup>21</sup> Ibid.

21. We asked the Minister if he still saw benefits in ratification. He confirmed that the Government thought that ratification of the Convention would be:

“A demonstration that the Government is committed to working at home and abroad to ensure that human rights are enjoyed by all people, all disabled people. Importantly as well, the Convention will provide an important part of the analysis and benchmarking as we develop our policies going into the future.”<sup>22</sup>

**22. We welcome the Minister’s statement that the Government accepts the clear benefits of ratification of the Convention. The findings of our recent inquiry on the rights of adults with learning disabilities showed that although UK law and policy on the treatment of adults with learning disabilities takes a human rights based approach, the day to day experiences of people with learning disabilities are not so positive. 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. We look forward to seeing more detail about how, in practice, the Government proposes to ensure that the UNCRPD will play an important part in policy formation.**

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<sup>22</sup> Ev1 Q2.

### 3. Progress to ratification

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23. The Government first publicly stated that reservations to the Convention were being considered in its response to our Report on the treatment of adults with learning disabilities, in May 2008, more than a year after it signed the Convention. Despite our call for a full explanation of the Government's views on the compatibility of domestic law with the Convention, we were then provided with little detail on the reservations being considered or the Government's approach to the process.<sup>23</sup>

#### Involvement of people with disabilities

24. The Centre on Human Rights established by Disability Action told us that it was:

“Disappointed at the lack of information from Government regarding the ratification process and the outcome of its review of the compatibility of domestic legislation and administrative practice with the UN Convention. The information available to the public about these processes and the precise form of reservations and declarations is extremely limited. This has a freezing effect on the public debate of highly significant issues.”<sup>24</sup>

25. The EHRC added its concern that this approach was incompatible with the spirit of the Convention, which required that disabled people be involved in decision-making and the implementation of the Convention. It was also concerned that its position had been compromised by its engagement with the Government on a confidential basis:

“The Commission finds the lack of transparency and consultation by Government concerning proposed reservations and interpretative declarations deeply regrettable and out of keeping with the Convention's emphasis on disabled people's involvement at all levels as required by article 4(3) of the Convention. Whilst the Commission has been [apprised] of the general detail of other proposed reservations and interpretative declarations the confidential nature of this information has had an extremely limiting effect upon the Commission's ability to act on it...The Commission therefore proposes that the outcome of the Government's review of compatibility of domestic legislation, policies, practices and procedures, including proposed reservations and interpretative declarations, action plans for promotion is published for consultation prior to ratification.”<sup>25</sup>

26. We put these concerns to the Minister and asked him what steps he now proposed to take to make progress towards ratification more transparent. He told us:

“We have engaged with disabled people and their representatives. I have heard the criticism that it may not have been as much as people are accustomed to, but obviously we have Equality 2025, which we established as part of our commitment to ensuring that disability issues are addressed across Government; and that body,

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<sup>23</sup> Ev 19, Ev 20

<sup>24</sup> Ev 37

<sup>25</sup> Ev 40-41, paras 3.10-3.11

which is made up of disabled people, have been providing advice to Government departments, as have my own officials in the Office of Disability Issues.<sup>26</sup>

We have had discussions with disabled organisations, both my predecessor and I; and they have made clear their views on a number of the points you have just made.<sup>27</sup>

We have had discussions – it is not fair to say that we have had no discussions with disabled people or their organisations; we have had that, and we have received advice from the [EHRC] and the advice from Equality 2025, a body that we have set up of disabled people to provide us with that advice. It is not fair to say that we have operated in a silo, divorced of any discussion with disabled people or their organisations.”<sup>28</sup>

27. The Minister went on to argue that the Government needed time to formulate its policy in private. When the Government had formulated its view, it would be communicated to Parliament and the wider public. Then, he explained, this would be subject to parliamentary scrutiny and “doubtless civic society will have discussions and input into where we have got to”.<sup>29</sup> Under the Ponsonby Rule, the Convention must be laid before both Houses of Parliament at least 21 sitting days before ratification. The power to ratify, and to propose reservations or interpretative declarations, remains a prerogative power of the executive. After laying the Convention before Parliament, the Government will be free to proceed with its proposals, despite any objections raised by parliamentarians or others.

28. After hearing the evidence of the Minister, the UN Convention Campaign Coalition wrote to us with its reaction to the Minister’s views. The Coalition remained concerned about the lack of transparency during the ratification process and the lack of consultation with disabled people and their organisations. It explained:

“Equality 2025 is a group of individuals appointed by the Government to advise them on disabled issues and to act as a conduit. They are not a representative organisation. Equality 2025 has had to struggle quite hard to be allowed to provide any advice on this issue. The Government has only held one meeting with representative disabled peoples organisations since adoption on 30 March 2007. This was on 4 December 2007 and despite numerous requests for further meetings none has yet been called. In its Statement on the Purpose of Equality 2025, [Equality 2025] says “The network will not replace any existing government consultation mechanisms nor be used by Government instead of consultation.””<sup>30</sup>

29. We asked for further information on the steps taken by the Minister or his officials to consult with either Equality 2025 or other disabled people or their organisations, including details of specific meetings or discussions. The ODI told us:

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<sup>26</sup> Ev 3 Q13

<sup>27</sup> Ev 4 Q17

<sup>28</sup> Ev 4 Q20

<sup>29</sup> Ev 3 Q13

<sup>30</sup> Ev 14

- Although the Minister referred in his evidence to discussions that he or officials had had with disabled people and their groups, this should not be equated with a formal consultation process.
- Engagement with groups had taken various forms as work on ratification progressed.
- Prior to the Statement of Anne McGuire MP, former Minister for Disabled People on 6 May 2008 (when reservations were first publicly proposed) this had included “broad updates in the course of various general meetings”.
- Subsequently, Equality 2025 requested meetings with a number of Departments. They met with official(s) from the Ministry of Defence on 23 June; the DCSF on 2 July; and the Home Office on 23 July. They met an official from the Department of Health, to discuss compatibility of the treatment of people with mental health conditions with the Convention on 24 June.
- As a result of these meetings draft texts were provided to Equality 2025 by both DCSF and the Home Office. The Ministry of Defence agreed to discuss the wording of its proposed reservation with the ODI.
- ODI officials also met with Disability Action (in Northern Ireland) on 25 June and with SCOPE on 2 September (at the request of those organisations). During these meetings the Statement was “discussed in detail”.
- At two general meetings with organisations of disabled people (including on 26 June and 29 October), the former Minister and the Minister for Disabled People had each discussed progress towards ratification of the Convention, including discussion of reservations.
- DCSF had discussed the text of its proposed reservation with the Council for Disabled Children on 8 July. After this meeting, the Council proposed an alternative text.<sup>31</sup>

**30. We are concerned that there has been limited active engagement by the Government with disabled people and their groups. While we understand that discussions have taken place between the Minister and his predecessor, officials and disabled people and their organisations, it appears that these discussions were largely at the instigation of the groups themselves and based on relatively little open information. As the ODI acknowledges in its supplementary evidence, these discussions are not a substitute for consultation. We are disappointed that, although drafts of some proposals for reservations were available in June and July, these were not published in response to our August request for further information and that the Minister has since been reluctant to place drafts in the public domain. There would be clear benefits in consulting people with disabilities and their organisations on whether or not reservations to the UNCRPD are necessary. In our view, these would include increased confidence on the part of disabled people in the Government’s approach. In addition, open discussions with the people most affected by the potential reservations and**

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<sup>31</sup> Ev 67-69

**interpretative declarations may help persuade Government that they are unnecessary. If, after consultation, Government consider that reservations are appropriate, it will be in a better position to address individual objections and concerns during parliamentary scrutiny.**

## Transparency and engagement

31. We asked the Government to publish the details of the reservations being considered and the reasons for them, together with the outcome of the Government's internal review of the compatibility of domestic law and practice with the requirements of the Convention.<sup>32</sup> The former Minister refused to publish this information, indicating that it will only be published, if at all, when the Government's position is settled and the Explanatory Memorandum for ratification is published.<sup>33</sup>

32. Scope told the Committee:

“The problem of lack of information for, and consultation with disabled people has been an ongoing problem in the period since signing. For example trying to find out about the details of the various reservations suggested in the Minister's letter was very difficult making the possibility of having a meaningful input very limited. Organisations such as Scope were left to contact the individual Government departments whose willingness to enter into a dialogue varied considerably. As a result there was a lot of misinformation about the exact details of proposed reservations and interpretative declarations.”<sup>34</sup>

33. We asked the Minister to consider publishing draft reservations or a draft Explanatory Memorandum for consultation now. The Minister was unable to make this commitment, but promised to reflect on our concerns.<sup>35</sup>

**34. We consider that progress towards ratification of the Convention by the UK has so far lacked transparency and has unfortunately alienated disabled people and their organisations. This is unacceptable in the light of the clear Convention commitment which the Government intends to make to the involvement of disabled people in the development of policies and laws which affect them. This approach undermines the previous role that the UK Government has played in championing equality for disabled people and their leading role in negotiating the terms of the UNCRPD.**

## Joined-up government and the ratification of treaties

35. Our predecessor Committee observed in 2005 that cross-Government coordination on human rights treaties lacks coherence. It recommended that the then Department for Constitutional Affairs Human Rights Division (now at the Ministry of Justice) should take on a coordinating role in respect of the implementation of all international human rights treaties.<sup>36</sup> Anne McGuire MP, the former Minister, explained:

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<sup>32</sup> Ev 17

<sup>33</sup> Ev 19-21

<sup>34</sup> Ev 59

<sup>35</sup> Ev 4-5 Q24-Q26, Ev 7 Q39

<sup>36</sup> Nineteenth Report of Session 2004-05, *The Work of the Committee in the 2001-05 Parliament*, paragraph 185.



“Individual Departments and Devolved Administrations have been responsible for deciding upon their own positions. However, the Office for Disability Issues has co-ordinated this, and has stressed the need for Departments and Devolved Administrations to have careful regard to the need for any reservations and interpretative declarations to be compatible with the object and purpose of the Convention.”<sup>37</sup>

36. The Committee recently asked the Home Secretary about the reservation being sought by the Home Office, but she said that she had not considered a reservation.<sup>38</sup> On the other hand, the Department for Children, Schools and Families (DCSF) submitted evidence to this inquiry, explaining in more detail why it considers that Article 24 (right to education) of the Convention might, in its view, prevent it from lawfully continuing with the Government’s current policy on education for children with disabilities.

37. We asked the Minister for further information on his coordinating role, including whether he, his predecessor or their officials had taken steps to persuade other Government departments that reservations were unnecessary. He explained:

“We have had discussions and I am not averse, and certainly my predecessor would not have been averse, to twisting a few arms when necessary, but we would not twist arms in public; we would have those discussions with colleagues in private. We would not have these disagreements in public because that is not the way that collective Government does its business.”<sup>39</sup>

38. We were encouraged to hear the Minister explain that he considered that his role and the role of his officials included providing advice to other Departments and agencies on the requirements of the Convention and attempting to change their minds when reservations appeared to be unnecessary or incompatible with the spirit of the Convention. Unfortunately, when we questioned the Minister in greater detail about his role in relation to the reservations being sought by individual Departments, his responses suggested that the coordinating role of the ODI was relatively limited. For example, in respect of reservations being sought by the Home Office, the Minister explained:

“[The Home Office] will explain in detail their reservation when we publish the explanatory memorandum. It is for departments to determine...whether or not they have reservations.”<sup>40</sup>

I, as Minister for the Disabled, have a coordinating role, but I cannot seek to provide the position on detail for that of the Home Office.”<sup>41</sup>

**39. Although the Office for Disability Issues (ODI) has adopted a coordinating role in Government on ratification of the UNCRPD, it is unclear exactly what this role has been. The evidence which we heard from the Minister for Disabled People suggests that**

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<sup>37</sup> Ev 19

<sup>38</sup> Q 104, HC-1142, 28 October 2008, Uncorrected Transcript. She later wrote to clarify that the position was being considered by officials and that she would write soon with further information. Letter from the Home Secretary to the Chair, dated 10 November 2008. This letter will be published shortly in our Second Report of Session 2008-09, *The Work of the Committee in 2007-08*, HL Paper 10/ HC 92.

<sup>39</sup> Ev 6 Q35

<sup>40</sup> Ev 7 Q38

<sup>41</sup> Ev 7 Q43

each Department has been asked to forward its concerns and a “wish list” of reservations to the ODI. Collective responsibility means that the Minister must defend the need for reservations publicly, but it is unclear whether anyone within Government has ever scrutinised these departmental requests to ascertain if they are strictly necessary, or seriously challenged their compatibility with the Convention. In the light of the lack of transparency that has accompanied progress towards ratification, we consider that this approach is unsatisfactory.

### Timetable for ratification: next steps

40. The Minister told us that the Government intends to press ahead with ratification of the Convention as soon as possible and set a date of Spring 2009, with such reservations as the Government considers necessary.<sup>42</sup>

41. The European Commission has now published its proposals for ratification of the Convention.<sup>43</sup> The former Minister explained that:

“The Government will need to consider the implications of the Commission’s proposals for UK ratification, and in particular, will want to consider whether the Commission’s competence claims have any specific implications for the package of any domestic reservations and interpretative declarations.”<sup>44</sup>

42. A number of submissions, including by Scope and the EHRC, told us that waiting for European Community (EC) ratification to be complete was unnecessary, not least because the UK would be involved closely in the terms of the EC ratification and other States had not seen any problem with early ratification before the Community. The Minister for Disabled People confirmed that the United Kingdom would not wait for the ratification of the Convention by the EC.<sup>45</sup>

43. There was general support in the evidence which we received for ratification of the Convention by the UK as soon as possible. Disappointment was expressed that there had been any delay on progress towards ratification and that the UK had not been among the first group of states to ratify,<sup>46</sup> including because this detracted from the enthusiastic support that the UK had expressed for the treaty and the message it sent to disabled people.<sup>47</sup> Others expressed the view that the UK had a positive reputation for treating people with disabilities well and that the Government’s reluctance to ratify sent a message to other states that there were problems inherent in the Convention.<sup>48</sup>

**44. We are extremely disappointed that the Minister has failed to meet the Government’s original goal of ratification by the end of 2008. We are particularly concerned that this failure means that the United Kingdom has not been involved in**

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<sup>42</sup> Ev 1 Q1

<sup>43</sup> COM (2008) 530/final/2 VOL. I, Proposal for a Council Decision concerning the conclusion of the United Nations Convention on the Rights of Persons with Disabilities, 16 September 2008. COM(2008) 530 final VOL. II, Proposal for a Council Decision concerning the conclusion of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities, 12 September 2008.

<sup>44</sup> Ev 20

<sup>45</sup> Ev 8 Q48

<sup>46</sup> Ev 25, Ev 27 para 2.5, Ev 33, Ev 35

<sup>47</sup> Ev 33, Ev 37, Ev 39

<sup>48</sup> Ev 54

**the establishment of the monitoring mechanisms for the Convention from the outset. We welcome the Minister's acknowledgement that the United Kingdom need not wait for ratification by the European Community before proceeding to ratify.**

45. Mixed views were expressed over whether ratification should go ahead with reservations or interpretative declarations. A number of witnesses argued that if the Government could not be persuaded to ratify without reservation, ratification should go ahead in any event and as soon as possible. Others were reluctant to support ratification with any reservations or interpretative declarations. The EHRC has told us that:

“Whilst the Commission's Disability Committee is opposed to reservations and interpretative declarations, it does not favour opposing indefinitely ratification on these grounds and wishes to see ratification at the earliest opportunity.”<sup>49</sup>

46. In contrast, the UN Convention Campaign Coalition is campaigning to ensure that the UK only ratifies the Convention without reservations. It explained:

“By ratifying the Convention on the Rights of Disabled People with reservations the UK government would be declaring its willingness to accept less than the agreed international standard for the protection of the individual rights of disabled people in the UK.”<sup>50</sup>

47. The Coalition went on to explain its view that ratification with the reservations currently envisaged would be incompatible with the spirit of the Convention, would fail to recognise the concept of progressive realisation (explained in paragraph 73 below) and would not be compatible with the Government's policy intention to achieve equality for people with disabilities by 2025. It stressed that reservations, once in place, could take decades to remove.<sup>51</sup>

**48. We recommend that the Minister publish the current text of each of the reservations and interpretative declarations being considered by the Government without delay to allow full consultation to take place with disabled people and their organisations. The publication of these drafts and the reasons for the Government's concerns before the proposals for ratification are laid before Parliament should not unnecessarily delay progress towards ratification. Even allowing for a 4-6 week period for consultation, the Minister's target of Spring 2009 should be achievable. The Government has discovered, since May 2008, that a number of interpretative declarations or reservations are not needed. A further period of open scrutiny may persuade the Government that its position on the remaining proposals for reservations, developed in isolation, has been unduly cautious.**

**49. We share the view of the EHRC that ratification of the Convention ought to take place as soon as possible. Significant delay by the United Kingdom will undermine its standing in the international community, may reduce its ability to participate in the further development of the monitoring mechanisms for the treaty and may undo some of the positive and encouraging developments in the Government's perception as a leader in the campaign for policies and laws which enable disabled people to live**

<sup>49</sup> Ev 41 para 3.12

<sup>50</sup> Ev 53

<sup>51</sup> Ibid

**independent and equal lives. However, we consider that the number of reservations currently being considered by the Government may send a negative impression to the other State Parties to the Convention and to disabled people in the United Kingdom.**

**50. Whilst we welcome the new goal set by the Minister of ratification by Spring 2009, we would be extremely disappointed if ratification were to proceed without any further opportunity for consultation and scrutiny by disabled people and their organisations.**

## 4. Proposals for reservations

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51. The UNCRPD provides that reservations incompatible with the object and purpose of the Convention shall not be permitted.<sup>52</sup> This reflects the general law of treaties. Generally, States will enter reservations to treaties where they wish to reserve an existing position in national law which may not be compatible with all the requirements of the treaty. At the time of writing, only four States had entered reservations to the Convention. El Salvador has entered a reservation which purports to give priority to the domestic constitution when conflicts arise; Malta and Poland have both entered reservations in relation to the domestic law on abortion and Mauritius has entered a reservation on risk and humanitarian emergencies. A number of interpretative declarations have also been entered by Australia, Egypt, Malta, Mexico and the Netherlands.<sup>53</sup>

52. Currently, we understand that the Government is considering at least four reservations to the UNCRPD, in respect of immigration, education, service in the military and benefits appointees. A number of additional interpretative declarations are also being considered, including in respect of the right to education. Without the text of the proposed interpretative declarations we cannot assess whether these should more appropriately be considered reservations to the Convention. We asked the Minister to explain why the Government was seeking to at least double the number of reservations already entered to the Convention by the existing 43 State Parties. The Minister said that it would not be appropriate for him to comment on ratification by other countries.<sup>54</sup> **The proposal that the UK make at least the same number of reservations to the Convention as all 43 existing State Parties combined is extremely worrying. It sends a stark message to other signatories to the UNCRPD that the UK is concerned about its content. Without clear justification having been provided, this proposal understandably shakes the confidence of disabled people in the UK in the Government's approach to the Convention. We consider that the Minister's explanation that it would not be appropriate for the UK Government to consider the position of other State Parties to the Convention rather misses the point of our comparison.**

53. Most of the submissions we received argued that the reservations being considered by the Government were unnecessary or incompatible with the object and purpose of the Convention. A number of detailed reasons were provided, which are considered in greater detail below. In short, witnesses considered that the Government had taken a narrow view of the requirements of the Convention or had misread the requirements of domestic and EU law on anti-discrimination or the Convention. In particular, in relation to the proposed reservation to the right to education (Article 24), a number of witnesses considered that the Government had not adequately considered the nature of the general principle of progressive realisation. Article 4(2) provides that with regard to economic, social and cultural rights (including education), the State will take measures "to the maximum of its available resources[...]with a view to achieving progressively the full realization of these rights."

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<sup>52</sup> Article 46

<sup>53</sup> [www.un.org/disabilities/](http://www.un.org/disabilities/) [Last accessed 16 December 2008] For example, Australia has made three declarations about its understanding about the scope of the Convention in relation to mental capacity, compulsory treatment for people with mental health disabilities in certain circumstances and in relation to immigration and citizenship.

<sup>54</sup> Ev 12-13 Qq94 - 96

54. Only two submissions supported a reservation or interpretative declaration, in relation to the provision of inclusive education (Article 24). These were from the Department of Children Schools and Families and RESCARE, an NGO run by families of children and adults with learning disabilities.<sup>55</sup> These are considered in more detail below.

## Compatibility of existing laws and practices with the Convention

55. Most witnesses acknowledged the substantial protection offered to disabled people by existing anti-discrimination legislation in the Disability Discrimination Act 1995 (as amended). However, a number of witnesses stressed that disabled people in the UK are not supported to lead equal and inclusive lives.<sup>56</sup> This evidence is consistent with the findings of the Committee's report on the treatment of adults with learning disabilities, which concluded that although current law and policy is positive, the practical experience of individuals is not (in other words, there is a gap between policy and reality).<sup>57</sup>

56. A number of witnesses raised examples of domestic practice that they considered may be inconsistent with the spirit of the Convention (no witness suggested that any of these concerns required a reservation to the UNCRPD). These concerns included:

- health inequalities and the inappropriate use of physical and chemical restraint in healthcare settings;<sup>58</sup>
- inequalities in access to education, employment and the wider community;<sup>59</sup>
- inaccessible transport and buildings (including public buildings and social housing);<sup>60</sup>
- inaccessible public information;<sup>61</sup>
- inadequate provision of social care;<sup>62</sup>
- inequality in relation to goods and services, including consumer goods;<sup>63</sup>
- violence towards people with disabilities;<sup>64</sup> and
- poverty and people with disabilities.<sup>65</sup>

**57. In addition to the publication of its draft proposals for reservations and interpretative declarations, we also recommend that the Government should publish the outcome of its own review of the compatibility of domestic law and practice with the requirements of the Convention. This would assist with more detailed scrutiny of**

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<sup>55</sup> Ev 54, Ev 31

<sup>56</sup> See for example Ev 22

<sup>57</sup> Seventh Report of Session 2007-08, paras 101-109

<sup>58</sup> For example Ev 64, Ev 24

<sup>59</sup> For example Ev 61, Ev 22

<sup>60</sup> For example Ev 63, Ev 22

<sup>61</sup> Ev 26

<sup>62</sup> Ev 29-30, Ev 24

<sup>63</sup> Ev 26

<sup>64</sup> Ev 60

<sup>65</sup> Ev 61

**the Government’s approach to ratification of the Convention. The Government should be able to explain clearly why it considers that UK law and administrative practice currently complies with the requirements of the Convention.**

58. A number of witnesses considered that the House of Lords decision in *Malcolm* created some difficulties in relation to the ability of the UK to meet its obligations under the Convention. The case of *Malcolm* involved a housing dispute, where a tenant with a mental health disability sought to argue that he had acted in breach of his tenancy because of his disability and so it would be discriminatory to evict him for sub-letting his flat. The House of Lords decided that the DDA required that disability should be a motivating factor in any “less favourable treatment” in order for that treatment to be unlawful.<sup>66</sup> So, even if, “but for” his disability, Mr Malcolm would not have sub-let his flat, the sub-letting was in breach of contract and it was lawful for his landlord to evict him on that basis. One of our members, Lord Lester of Herne Hill QC recently argued in the House of Lords that, under our current interpretation of the DDA, this means: “A person who is blind, or visually impaired, with a dog will not be able to claim disability discrimination if a restaurant has a “no dogs” policy and applies the policy regardless of disability”.<sup>67</sup>

59. The TUC told the Committee that this decision had a “retrogressive impact” on the protection of people with disabilities from discrimination.<sup>68</sup> The former Minister told the Committee:

We do not underestimate the significance of the House of Lords decision in *Malcolm* in overturning previously established case law on disability related less favourable treatment. We are actively considering whether, and if so, what, legislative change might be needed. We are not yet in a position to make any proposals, though we would expect to consult on any proposals prior to their inclusion in the Equality Bill.<sup>69</sup>

60. The Leonard Cheshire Foundation told the Committee:

“We are very concerned about the recent *Malcolm* judgment by the House of Lords, which significantly narrowed the scope of protection offered against discrimination on the grounds of disability [...] We suspect that it might conflict with the Government’s duty to end all forms of discrimination under Article 4 of the Convention and urge the Government to address this issue at the earliest possible opportunity.”<sup>70</sup>

61. Some witnesses praised the Government’s proposal for consultation but pressed for a reversal of the *Malcolm* decision in the forthcoming Equality Bill. The Minister told us that it was the Government’s view that *Malcolm* would not stand in the way of ratification of the UNCPRD and that the Government intended to change the position in the Equality Bill.<sup>71</sup>

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<sup>66</sup> *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* [2008] UKHL 43, paragraph 40

<sup>67</sup> HL Deb, 9 July 2008, Col 749

<sup>68</sup> Ev 27

<sup>69</sup> Ev 20

<sup>70</sup> Ev 35

<sup>71</sup> Ev 8 Qq51-52

62. The ODI published a consultation paper, entitled *Improving Protection from Disability Discrimination*, on 26 November 2008 which presents the Government's proposals for the treatment of discrimination against disabled people in the forthcoming Equality Bill.<sup>72</sup> The Government accepts that "the [*Malcolm*] judgment has disturbed the balance between the rights of disabled people and the interests of duty holders by making it more difficult for a disabled person to establish a case of disability-related less favourable treatment". It states however that the protection of the DDA, post-*Malcolm*, remains "sufficient to meet the obligations of the United Nations Convention on the Rights of Persons with Disabilities". The Government has provided no further explanation of this view either in its evidence to our inquiry or in the consultation paper.

**63. We welcome the Government's decision to conduct an open consultation on its response to the House of Lords decision in *Malcolm*. We do not share the confidence of the Government that the judgment does not create difficulties for the compatibility of existing domestic anti-discrimination law with the requirements of the UNCRPD. At the very least, this change in the law means that the UK is less likely to meet its obligation under Article 5 of the Convention to prohibit all discrimination on the basis of disability, to guarantee to persons with disabilities equal and effective protection against discrimination on all grounds and to promote equality, eliminate discrimination and take appropriate steps to ensure that reasonable accommodation is provided for people with disabilities. We welcome the Government's decision to bring forward a new settlement for the protection of people with disabilities from discrimination in the forthcoming Equality Bill, and to remove the implications of the *Malcolm* judgment. We will examine these proposals during our scrutiny of the Bill.**

## Home Office and immigration

64. The former Minister explained that the Home Office:

"Will wish to have a reservation in respect of Convention Article 18.1 and an interpretative declaration in respect of 18.2. These concern immigration and nationality. The UK has a comprehensive set of rules and procedures for governing entry and stay in the UK and for the acquisition of citizenship [...] The Government believes that the UK must retain such flexibility (and made a reservation to this effect when ratifying the Convention on the Rights of the Child)."<sup>73</sup>

65. Article 18 of the Convention provides that State Parties will recognise the rights of persons with disabilities to liberty of movement, freedom to choose their residence and to a nationality, on an equal basis with others. This right includes the right to acquire and change nationality without discrimination on the basis of disability and the right not to be deprived on the basis of disability of the right to utilise immigration proceedings or other processes which might enable them to exercise their right to liberty of movement.

66. The Home Office has recently indicated its intention to remove its existing immigration reservation to the Convention on the Rights of the Child.<sup>74</sup> This decision is in keeping with the Committee's view, and the view of its predecessors, that this reservation

<sup>72</sup> The consultation period for this consultation was 6 weeks (ending on 6 January 2008)

<sup>73</sup> Ev 19

<sup>74</sup> Press Notice, DCSF, 'UK lifts Reservations on the UN Convention on the Rights of the Child' 22 September 2008.



should be withdrawn.<sup>75</sup> We asked the Minister why the Home Office considered a new reservation in similar terms was necessary in respect of the UNCRPD.

67. The Minister told us:

“I think the Home Office would not say that their desire to have a reservation is related to that of the Convention for Children. It is essentially about immigration and particularly public health, where the Home Office may wish to screen individuals entering the country, or they may wish to do so in the future. That is something that I think all Member States would seek to want to do. I believe that all Member States have the power to impound an aeroplane for example, if they had a concern about the passengers’ public health.”<sup>76</sup>

It is about what the Home Office may wish to do in events unforeseen in the future.”<sup>77</sup>

68. This was the first time that either the need for immigration screening or the application of public health protection had been raised as a concern for the Home Office. It departed from the former Minister’s earlier indication that the Home Office reservation was similar to the reservation to the UN Convention on the Rights of the Child, which was motivated by a desire to ensure that the Convention did not grant any new immigration rights to children protected by its provisions. The Minister for Disabled People was unable to give us any further detail on the Home Office policy, explaining:

“When we publish the explanatory memorandum, the Home Office department will be able to provide the detail.”<sup>78</sup>

69. The Minister has since written to us to provide some further information. He explains that the Home Office position is far from clear: one or more reservations may be sought, in relation to Article 18 (the right to free movement) or in relation to other parts of the Convention:

“In respect of the position of the Home Office, that Department has indicated that there may be a need to enter one or more reservations or declarations, which as I understand it and have indicated to the Committee, are founded largely on public health considerations. The possible reservations or declarations are in respect of immigration and citizenship, with particular but not necessarily exclusive focus on Article 18 of the Convention. My officials are continuing to explore with the Home Office the scope and basis for these and I will write to you further on this point.”<sup>79</sup>

**70. It is disappointing that we have now asked three Ministers, including the Home Secretary for information about the Home Office policy in respect of the UNCRPD and we still have no clear answers about the Government’s proposals for immigration and citizenship reservations, in relation to the right to free movement without discrimination on the basis of disability or other parts of the Convention. It is**

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<sup>75</sup> See for example, Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers*, para 65.

<sup>76</sup> Ev 6 Q36.

<sup>77</sup> Ev 6 Q38.

<sup>78</sup> Ibid.

<sup>79</sup> Ev 15

particularly worrying that the Home Office approach appears to be based on a desire to insert a ‘catch all’ provision to cover as yet undetermined future policy proposals. This approach would be an entirely inappropriate way for the UK to approach a new set of positive international obligations.

## DCSF and education

71. Article 24 UNCRPD provides that States recognise the right of persons with disabilities to education. Its provisions include that:

“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; and
- (e) Effective individualised support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.”

72. Any economic and social rights in the Convention, including the right to education, are subject to the principle of progressive realisation according to available State resources (Article 4).

73. The former Minister told us that DCSF would be seeking a reservation or an interpretative declaration in respect of these aspects of the Convention in order to preserve the existing UK position which includes provision in mainstream schools and in special schools designed to meet the needs of children with special education needs, sometimes away from home.<sup>80</sup> The Minister for Disabled People has since explained that the Scottish Government supports the proposal for a reservation in the terms being considered by the Government.<sup>81</sup> DCSF has explained its position:

The UK Government is committed to continuing to develop an inclusive education system and through each local authority to continue to develop a range of provision

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<sup>80</sup> Ev 19

<sup>81</sup> Ev 54

that enables disabled children to achieve their potential. Working collaboratively with local authorities support services and special schools, mainstream schools can ensure that the wide spectrum of need is met. However, our domestic legislation provides that where a decision is being made on a school placement for a child with a statement of special educational needs, s/he must be educated in a mainstream school unless that is incompatible with the wishes of his/her parent or the provision of efficient education of other children. We wish to continue to enable local authorities to take parental wishes into account when determining school placements [...] Therefore, special schools remain an important part of local authorities inclusive range of educational provision for disabled children, and we propose to take an interpretative declaration to Article 24(2)(a) to clarify that the UK general education system includes both mainstream and special schools.

[...]

We are aware that some disabled children have their needs met by specialist provision, which can be some distance from their home and communities particularly for children from rural areas. Additionally, there is a risk that parental choice could be limited if such non local opportunities were no longer available to disabled children and their families...Following representations, we are considering how these concerns should be expressed to best reflect the Government's commitment to inclusion of disabled people.<sup>82</sup>

74. We received a significant number of submissions objecting to these proposals. The submissions argue that the department has misunderstood both the nature of inclusion, which would not require the Government to provide education which was not in the best interests of the child receiving it, and the nature of progressive realisation.<sup>83</sup> For example, Disability Equality in Education told us:

DCSF has 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'. This misses the point.

[The Convention] provides aspirations in the area of social, economic and cultural rights that state parties will work towards Article 4.2 makes this very clear. The full realisation of these rights, including Article 24, are to be achieved 'progressively'. This provision recognises that existing practices and structures do not fulfil the principles of the Convention...This clause allows state parties time to plan, to change the built environment and to challenge and change negative attitudes and practices.<sup>84</sup>

75. Other witnesses have argued that the DCSF position undermines the Government's commitment to inclusive education for disabled children and places too high a premium on parental choice, to the detriment of the rights of the child to be treated without discrimination.<sup>85</sup>

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<sup>82</sup> Ibid

<sup>83</sup> Ev 15, Ev 22-23, Ev 24, Ev 28, Ev 36, Ev 38, Ev 40, Ev 48, Ev 50-52, Ev 53, Ev 55, Ev 58, Ev 61, Ev 67

<sup>84</sup> Ev 50

<sup>85</sup> See for example Ev 15

76. We received one submission in support of DCSF's position. RESCARE, an NGO run by and for the families of children and adults with learning disabilities, told the Committee that the interpretative declaration and reservation proposed by the Government were "essential in meeting the educational needs of children and young people with learning disabilities, autism and other complex needs, as an option for their parents". It went on to explain:

"The implementation of the Government's position will ensure the retention of the expertise and environmental friendly special schools as a necessary and rightful parental choice option within an inclusive educational service of properly resourced mainstream, special day and residential schools."<sup>86</sup>

77. The Minister for Disabled People told us:

"The department's view is that having special educational needs provision that may be outside of the mainstream is inclusive because it may be that for some children that provision is not possible within the mainstream provision, and also it is the views and the wishes of parents, and within the interpretative declaration, that is why the department have made that, they do not see that they would want not to have that arrangement or that possibility, but certainly it is the Government's policy that we have sought to mainstream a great deal of education provision."<sup>87</sup>

78. We have now seen three justifications for the reservations or interpretative declarations being considered by the Department of Schools Children and Families:

- the need to continue to maintain some specialised provision outside the mainstream;
- the need to recognise that not all disabled children can, or will, be able to secure appropriate education close to home; and
- the need to support parental choice.

79. We have not yet seen the text of the proposed reservation or interpretative declaration, nor has the Government explained why it considers that these would be compatible with the object and purpose of the Convention.

**80. No detailed proposals for reservations or interpretative declarations to the right to education have emerged during our inquiry. We welcome the decision of the DCSF to provide us with a memorandum about its proposals but, despite this additional information, we do not have adequate information about the Government's position or its proposals to determine whether any reservation is necessary or compatible with the spirit of the Convention. We recommend that when the draft text of any reservation or interpretative declaration is published, that it is accompanied by a full explanation of why the Government considers that it is necessary and compatible with the object and purpose of the Convention. This should include a clear explanation of the**

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<sup>86</sup> Ev 32. Although they object to reservations, Leonard Cheshire have indicated that they would accept an interpretative declaration in the terms proposed by Equality 2025 Council for Children with Disabilities which sets a deadline of 2025 for full equality, Ev 34.

<sup>87</sup> Ev 9 Q57

**Government’s view that current law and policy should not be amended to allow the UK to ratify the Convention without reservation.**

**Ministry of Defence and service in the armed forces**

81. The former Minister told the Committee:

“The Ministry of Defence will wish to have a reservation in respect of service in the armed forces, consistent with the provisions of the Disability Discrimination Act 1995 (as amended).”

82. The provisions of the DDA provide the Ministry of Defence with an exemption in respect of service in the armed forces.<sup>88</sup> The European Commission’s current proposals for ratification include a proposal for a reservation which would permit, but not require, Member States to enter a similar reservation to exempt their armed forces.<sup>89</sup> So far, no EU Member State that has ratified the Convention has entered a reservation in respect of the armed forces. The Minister confirmed that no reservation has been made in respect of any State Parties’ armed forces. The UK would be the first country to seek a reservation in these terms.

83. A significant number of witnesses told the Committee that this reservation was unnecessary and that the MoD was being unduly cautious in retaining its exemption from the DDA. The UN Convention Coalition told the Committee:

The armed forces have already publicly acknowledged that the only problem they have with the Convention – as with the DDA – is that they should not be obliged to recruit disabled people. They are already retaining service men and women who become disabled when on active service. However, neither the DDA or the Convention requires an employer to employ an unqualified disabled person. Nobody would believe a war zone to be a reasonable environment for a blind or deaf person (for instance).<sup>90</sup>

84. The TUC agreed:

The critical point in this argument is that even without the [exemption/reservation] the armed forces would not be compelled to recruit any person who was not capable of doing the job. Ratifying the Convention without reservation would still not lead to the armed forces being required to recruit personnel not able to meet the requirements of the job. However, it is also evident – if only from the reported fact of numbers of service people apparently retained after disabling accident or injury - that there are many jobs within the armed forces that do not require full active service fitness and capability.<sup>91</sup>

<sup>88</sup> Section 64(7) Disability Discrimination Act 1995 provides that the section of the act which prohibits discrimination in employment will not apply to any of the armed forces. Section 49(C)(3) provides that the public authority disability duty will not apply to the armed forces in so far as it applies to recruitment or the service of any person serving in the armed forces.

<sup>89</sup> The UN Convention Campaign Coalition have indicated that this proposal was included at the request of the United Kingdom, Ev 15

<sup>90</sup> Ev 53

<sup>91</sup> Ev 26

85. The EHRC told the Committee:

“The Commission believes the time has come to lift the exemption of the armed forces from the Disability Discrimination Act in light of a positive change in attitudes towards equality and diversity in the military and this possibility has been raised with Ministers at the MoD.”<sup>92</sup>

86. We asked the Minister why the Government considered that these proposals were necessary. He said:

[The Ministry of Defence] really wants to be able to determine the service needs of the Armed Forces and it does not wish to be second-guessed on that, and so it stands that it is their wish to have this reservation and it will not come as a surprise given the history of the DDA. It is about service, as the Armed Forces would see it, and they want to have the flexibility to be able to deploy people as they see fit. Principally, every man and woman who is in the Armed Services could be deployed for front-line service.<sup>93</sup>

87. The Minister went on to explain that although not all serving personnel would be deployed to the front-line (particularly those who had previously been wounded in service), the armed forces were perhaps seeking the flexibility to be able to fill all of their posts from within their own ranks.<sup>94</sup> We asked the Minister if the time had come to revisit the exemption for the armed forces from the full application of the DDA, particularly in view of the evidence which we received that it is unnecessary. He told us that he expected that this issue would arise during debates on the forthcoming Equality Bill.<sup>95</sup>

**88. We share the doubts of the EHRC and other witnesses over whether the continued exemption of the armed forces from the application of the DDA is justified. We agree with the Minister that the forthcoming Equality Bill will provide a timely opportunity for the Ministry of Defence to consider whether its position is now outdated. It would be unfortunate if reservations were entered to the Convention which were quickly proved unnecessary as a result of a positive reform in domestic law. We recommend that the Government now consider, against the background of its commitments in the UNCPRD, whether an amendment to the DDA might be included in the forthcoming Equality Bill to remove the exemptions currently enjoyed by the armed forces. If the Ministry of Defence consider that the exemptions continue to be justified, we would expect the Government to provide supporting evidence for its position.**

### **Are reservations necessary or appropriate?**

89. We currently lack detailed information on the scope of the reservations and interpretative declarations being considered by Government. For example, the Minister for Disabled People told us about an additional reservation which the Department for Work and Pensions consider necessary, in relation to benefits appointees and capacity (Article 12). This was the first that our Committee had heard of this reservation, despite

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<sup>92</sup> Ev 40.

<sup>93</sup> Ev 9 Q58.

<sup>94</sup> Ibid.

<sup>95</sup> Ev 10 Q64.

having been in detailed correspondence with the department during the preceding months.<sup>96</sup> During oral evidence, the Minister reassured us that some reservations which were previously considered were now thought unnecessary and provided further detail on the individual reservations and interpretative declarations being sought by each department.<sup>97</sup> Since the Minister gave evidence, it has emerged that the Home Office may be considering multiple reservations or interpretative declarations.<sup>98</sup> This is an entirely unacceptable way to act if we are to conduct effective scrutiny of the Government's position and proposals for reservations.

**90. We have inadequate information to reach a firm conclusion on the necessity for each of the reservations being considered by the Government. However, in the light of the evidence we have received and the detail we have seen, we share the doubts of many disabled people's organisations that any, or all, of the reservations or interpretative declarations currently being considered by the Government are both necessary and compatible with the object and purpose of the UNCRPD.**

**91. If the Government now considers that reservations are necessary, it must provide clear justification for its position and its view that the reservations or interpretative declarations are permitted. We are concerned that the Government's proposals imply an outdated approach to equality for disabled people, proceeding on the premise that reservations are needed in order to maintain the Government's current policy, rather than examining whether the current policy is appropriate or compatible with the goals of the Convention. This defensive approach is in stark contrast to the Government's goal to achieve equality for all disabled people by 2025. This approach, in our view, could have been avoided through the adoption of greater transparency and by providing the opportunity for closer scrutiny of the Government's concerns.**

**92. If the Government decides to proceed with its proposals for reservations to the Convention, other States may be able to challenge the reservations, as incompatible with the object and purpose of the Convention. Some witnesses told us that reservations being proposed were liable to challenge, particularly in respect of the concerns of the DCSF and the proposals for reservations in respect of the right to education. We consider that it would be premature for us to express a firm view on the compatibility of any proposals with the object and purpose of the Convention. We recommend that together with publishing the draft text of any proposed reservations, the Government provide a clear explanation of its view that they are compatible with the object and purpose of the UNCRPD.**

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<sup>96</sup> Ev 1 Q1

<sup>97</sup> Ibid.

<sup>98</sup> Ev 67

## 5. The Optional Protocol

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93. The former Minister explained that the Government does not generally see benefit in the ratification of Optional Protocols granting the right of individual petition to international bodies, because the decisions of international monitoring bodies are not binding.<sup>99</sup> She explained that the Government was waiting to publish the results of the Ministry of Justice’s review of the experimental ratification of the Optional Protocol to CEDAW (the UN Convention on the Elimination of Discrimination against Women). She told the Committee that no decision had been taken, but a decision not to ratify the Optional Protocol should not be taken to “imply that [the Government’s] commitment to human rights for disabled people is somehow reduced.”

94. The TUC told the Committee:

The Optional Protocol offers the means for individuals to seek redress under the Convention and the TUC supports UK citizens having the means to enforce the rights that the Government has signed up to. Not to ratify the Protocol at the same time as the Convention would signal a retreat from the principles underlying both.<sup>100</sup>

95. The EHRC added a number of additional reasons for ratification of the Optional Protocol. These included that:

- the Opinions of the Committee will create greater understanding of how the Convention should be developed and interpreted and the UK is in a good place to help with this (the Committee will be able to praise examples of good practice as well as to help to develop further any inadequate policies);
- it will allow the domestic courts to start to take account of the Convention once the Committee starts to be asked for its views of decisions from the UK courts; and
- it is difficult to see any arguments against granting this extra right to people with disabilities – after all if the Government is confident that the UK laws and policies comply then there will be very few successful cases.<sup>101</sup>

96. The European Commission proposes that the European Community should ratify the Optional Protocol. If this is agreed, it is unclear how this would affect citizens within the UK. It is likely that if the EC were to ratify the Optional Protocol, but the UK did not, EU citizens in the UK could bring individual cases to the Committee on the Rights of Persons with Disabilities on issues where the EC had exercised its competence (for example, in relation to employment), but not in relation to other matters.

97. We asked the Minister to explain the Government’s approach to the Optional Protocol. He told us that the Government did not fear a flood of applications under the right of individual petition. He noted the ongoing review by the Ministry of Justice of the UK ratification of the Optional Protocol to the UN Convention on the Elimination of Discrimination Against Women (the CEDAW review) and explained that despite this review, his office was canvassing views of other Government departments on whether the

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<sup>99</sup> Ev 20

<sup>100</sup> Ev 28

<sup>101</sup> Ev 41 para 3.13



UK should sign and ratify the Optional Protocol, accepting the right of individual petition. The outcome of the CEDAW review was published by the Ministry of Justice on 4 December 2008.<sup>102</sup> The Minister for Human Rights explained that the value of that review had been limited as the number of cases brought (two) had been statistically insignificant. He confirmed that the Government would now review the merits of ratification of individual mechanisms for individual petition to international human rights bodies on a case by case basis.<sup>103</sup>

**98. We consider that the benefits of ratification of the Optional Protocol to the UNCPRD are reasonably clear. The UK has led the field in pushing for the acceptance of the Convention and advocating the rights of people with disabilities to equal treatment. We have received evidence that the right to individual petition is considered an essential part of participation in the Convention by disabled people and their organisations. In addition, we consider that the participation of the UK, from an early stage, in the interpretation of the Convention and the development of its monitoring mechanisms would be valuable not only for disabled people in the UK, but for the ongoing development of the Convention at an international level. In any event, should the European Commission proceed to ratify the Optional Protocol to the Convention, we could end up with the absurd situation that disabled people in the UK could take their cases to the UN, but only in relation to areas of law or policy where the EC had exercised competence, not purely domestic legislation or administrative action. In the field of equality and non-discrimination this is likely to leave a limited area where the UN monitoring mechanism would not apply. We recommend that the Government undertakes to sign and ratify the Optional Protocol at the same time as it ratifies the Convention.**

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<sup>102</sup> Ministry of Justice, *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, The Experience of the United Kingdom: An Evaluation*, Professor Jim Murdoch, 4 December 2008.

<sup>103</sup> HC Deb, 4 Dec 2008, Col 11WS

## 6. Monitoring and implementation

99. The Convention makes provision for States to identify one or more domestic “focal points” for the implementation of the Convention and separate independent mechanisms for monitoring (Article 33). Most witnesses who commented supported the proposals to name the EHRC and their equivalents in the devolved regions as the part of the independent monitoring mechanism for the Convention in the UK.<sup>104</sup>

100. The Government’s focal point will be the ODI. The EHRC has welcomed this approach, but expressed some concerns about their need for independence from the Department for Work and Pensions. It also expressed concern that “robust focal points and coordination mechanisms are established in the devolved administrations. This is especially important given the increasingly different political and policy frameworks in each country of Britain and the UK”.<sup>105</sup>

**101. As we have outlined above, we are concerned that the role of the ODI in relation to the process of ratification has been unclear. We consider that the focal point for the implementation of any international Convention should assume the responsibility for ensuring that the Government is taking all steps necessary to comply with the UK’s international obligations. This requires a strong presence with clear influence across Government. Monitoring compatibility cannot be left entirely to the domestic independent mechanism, in this case, the UK’s equality and human rights commissions. Government must assume a positive role in its approach to compliance. Article 33 of the UNCPRD, in our view, will not be satisfied by anything less.**

102. In the past, our predecessor Committee recommended that the Ministry of Justice should play this role across Government in relation to all of our international obligations.<sup>106</sup> In relation to the UK obligation to implement judgments of the European Court of Human Rights, we have recommended that the Secretary of State for Justice should have Ministerial responsibility for coordination across Government in order to add Cabinet-level credibility to this work. We have not yet received any substantive response to these recommendations.<sup>107</sup> **If the ODI is to act as the focal point for the implementation of the UNCPRD, we call on the Government to ensure that the Office has the full cooperation of all departments in its endeavours to ensure that the UK complies with its obligations and that equality, respect and dignity for people with disabilities are mainstream concerns throughout all areas of Government. This must include provision for effective coordination with the devolved assemblies at a high level and, if necessary, the designation of separate focal points.**

<sup>104</sup> See for example Ev 60

<sup>105</sup> Ev 42 para 4.3

<sup>106</sup> Nineteenth Report of Session 2004-05, *The Work of the Committee in the 2001-05 Parliament*, paragraph 185.

<sup>107</sup> Sixteenth Report of Session 2006-07, *Monitoring the Government’s Response to Court Judgments Finding Breaches of Human Rights*. HL Paper 128/HC 728

## Conclusions and recommendations

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1. We welcome the Minister's statement that the Government accepts the clear benefits of ratification of the Convention. The findings of our recent inquiry on the rights of adults with learning disabilities showed that although UK law and policy on the treatment of adults with learning disabilities takes a human rights based approach, the day to day experiences of people with learning disabilities are not so positive. 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. We look forward to seeing more detail about how, in practice, the Government proposes to ensure that the UNCRPD will play an important part in policy formation. (Paragraph 22)

2. We are concerned that there has been limited active engagement by the Government with disabled people and their groups. While we understand that discussions have taken place between the Minister and his predecessor, officials and disabled people and their organisations, it appears that these discussions were largely at the instigation of the groups themselves and based on relatively little open information. As the ODI acknowledges in its supplementary evidence, these discussions are not a substitute for consultation. We are disappointed that, although drafts of some proposals for reservations were available in June and July, these were not published in response to our August request for further information and that the Minister has since been reluctant to place drafts in the public domain. There would be clear benefits in consulting people with disabilities and their organisations on whether or not reservations to the UNCRPD are necessary. In our view, these would include increased confidence on the part of disabled people in the Government's approach. In addition, open discussions with the people most affected by the potential reservations and interpretative declarations may help persuade Government that they are unnecessary. If, after consultation, Government consider that reservations are appropriate, it will be in a better position to address individual objections and concerns during parliamentary scrutiny. (Paragraph 30)

3. We consider that progress towards ratification of the Convention by the UK has so far lacked transparency and has unfortunately alienated disabled people and their organisations. This is unacceptable in the light of the clear Convention commitment which the Government intends to make to the involvement of disabled people in the development of policies and laws which affect them. This approach undermines the previous role that the UK Government has played in championing equality for disabled people and their leading role in negotiating the terms of the UNCRPD. (Paragraph 34)

4. Although the Office for Disability Issues (ODI) has adopted a coordinating role in Government on ratification of the UNCRPD, it is unclear exactly what this role has been. The evidence which we heard from the Minister for Disabled People suggests that each Department has been asked to forward its concerns and a "wish list" of reservations to the ODI. Collective responsibility means that the Minister must defend the need for reservations publicly, but it is unclear whether anyone within Government has ever scrutinised these departmental requests to ascertain if they are strictly necessary, or seriously challenged their compatibility with the Convention. In the light of the lack of

transparency that has accompanied progress towards ratification, we consider that this approach is unsatisfactory. (Paragraph 39)

5. We are extremely disappointed that the Minister has failed to meet the Government's original goal of ratification by the end of 2008. We are particularly concerned that this failure means that the United Kingdom has not been involved in the establishment of the monitoring mechanisms for the Convention from the outset. We welcome the Minister's acknowledgement that the United Kingdom need not wait for ratification by the European Community before proceeding to ratify. (Paragraph 44)

6. We recommend that the Minister publish the current text of each of the reservations and interpretative declarations being considered by the Government without delay to allow full consultation to take place with disabled people and their organisations. The publication of these drafts and the reasons for the Government's concerns before the proposals for ratification are laid before Parliament should not unnecessarily delay progress towards ratification. Even allowing for a 4-6 week period for consultation, the Minister's target of Spring 2009 should be achievable. The Government has discovered, since May 2008, that a number of interpretative declarations or reservations are not needed. A further period of open scrutiny may persuade the Government that its position on the remaining proposals for reservations, developed in isolation, has been unduly cautious. (Paragraph 48)

7. We share the view of the EHRC that ratification of the Convention ought to take place as soon as possible. Significant delay by the United Kingdom will undermine its standing in the international community, may reduce its ability to participate in the further development of the monitoring mechanisms for the treaty and may undo some of the positive and encouraging developments in the Government's perception as a leader in the campaign for policies and laws which enable disabled people to live independent and equal lives. However, we consider that the number of reservations currently being considered by the Government may send a negative impression to the other State Parties to the Convention and to disabled people in the United Kingdom. (Paragraph 49)

8. Whilst we welcome the new goal set by the Minister of ratification by Spring 2009, we would be extremely disappointed if ratification were to proceed without any further opportunity for consultation and scrutiny by disabled people and their organisations. (Paragraph 50)

9. The proposal that the UK make at least the same number of reservations to the Convention as all 43 existing State Parties combined is extremely worrying. It sends a stark message to other signatories to the UNCRPD that the UK is concerned about its content. Without clear justification having been provided, this proposal understandably shakes the confidence of disabled people in the UK in the Government's approach to the Convention. We consider that the Minister's explanation that it would not be appropriate for the UK Government to consider the position of other State Parties to the Convention rather misses the point of our comparison. (Paragraph 52)

10. In addition to the publication of its draft proposals for reservations and interpretative declarations, we also recommend that the Government should publish the outcome of its own review of the compatibility of domestic law and practice with the requirements of the Convention. This would assist with more detailed scrutiny of the

Government's approach to ratification of the Convention. The Government should be able to explain clearly why it considers that UK law and administrative practice currently complies with the requirements of the Convention. (Paragraph 57)

**11.** We welcome the Government's decision to conduct an open consultation on its response to the House of Lords decision in *Malcolm*. We do not share the confidence of the Government that the judgment does not create difficulties for the compatibility of existing domestic anti-discrimination law with the requirements of the UNCRPD. At the very least, this change in the law means that the UK is less likely to meet its obligation under Article 5 of the Convention to prohibit all discrimination on the basis of disability, to guarantee to persons with disabilities equal and effective protection against discrimination on all grounds and to promote equality, eliminate discrimination and take appropriate steps to ensure that reasonable accommodation is provided for people with disabilities. We welcome the Government's decision to bring forward a new settlement for the protection of people with disabilities from discrimination in the forthcoming Equality Bill, and to remove the implications of the *Malcolm* judgment. We will examine these proposals during our scrutiny of the Bill. (Paragraph 63)

**12.** It is disappointing that we have now asked three Ministers, including the Home Secretary for information about the Home Office policy in respect of the UNCRPD and we still have no clear answers about the Government's proposals for immigration and citizenship reservations, in relation to the right to free movement without discrimination on the basis of disability or other parts of the Convention. It is particularly worrying that the Home Office approach appears to be based on a desire to insert a 'catch all' provision to cover as yet undetermined future policy proposals. This approach would be an entirely inappropriate way for the UK to approach a new set of positive international obligations. (Paragraph 70)

**13.** No detailed proposals for reservations or interpretative declarations to the right to education have emerged during our inquiry. We welcome the decision of the DCSF to provide us with a memorandum about its proposals but, despite this additional information, we do not have adequate information about the Government's position or its proposals to determine whether any reservation is necessary or compatible with the spirit of the Convention. We recommend that when the draft text of any reservation or interpretative declaration is published, that it is accompanied by a full explanation of why the Government considers that it is necessary and compatible with the object and purpose of the Convention. This should include a clear explanation of the Government's view that current law and policy should not be amended to allow the UK to ratify the Convention without reservation. (Paragraph 80)

**14.** We share the doubts of the EHRC and other witnesses over whether the continued exemption of the armed forces from the application of the DDA is justified. We agree with the Minister that the forthcoming Equality Bill will provide a timely opportunity for the Ministry of Defence to consider whether its position is now outdated. It would be unfortunate if reservations were entered to the Convention which were quickly proved unnecessary as a result of a positive reform in domestic law. We recommend that the Government now consider, against the background of its commitments in the UNCRPD, whether an amendment to the DDA might be included in the forthcoming Equality Bill to remove the exemptions currently enjoyed by the armed forces. If the Ministry of Defence

consider that the exemptions continue to be justified, we would expect the Government to provide supporting evidence for its position. (Paragraph 88)

**15.** We have inadequate information to reach a firm conclusion on the necessity for each of the reservations being considered by the Government. However, in the light of the evidence we have received and the detail we have seen, we share the doubts of many disabled people's organisations that any, or all, of the reservations or interpretative declarations currently being considered by the Government are both necessary and compatible with the object and purpose of the UNCRPD. (Paragraph 90)

**16.** If the Government now considers that reservations are necessary, it must provide clear justification for its position and its view that the reservations or interpretative declarations are permitted. We are concerned that the Government's proposals imply an outdated approach to equality for disabled people, proceeding on the premise that reservations are needed in order to maintain the Government's current policy, rather than examining whether the current policy is appropriate or compatible with the goals of the Convention. This defensive approach is in stark contrast to the Government's goal to achieve equality for all disabled people by 2025. This approach, in our view, could have been avoided through the adoption of greater transparency and by providing the opportunity for closer scrutiny of the Government's concerns. (Paragraph 91)

**17.** If the Government decides to proceed with its proposals for reservations to the Convention, other States may be able to challenge the reservations, as incompatible with the object and purpose of the Convention. Some witnesses told us that reservations being proposed were liable to challenge, particularly in respect of the concerns of the DCSF and the proposals for reservations in respect of the right to education. We consider that it would be premature for us to express a firm view on the compatibility of any proposals with the object and purpose of the Convention. We recommend that together with publishing the draft text of any proposed reservations, the Government provide a clear explanation of its view that they are compatible with the object and purpose of the UNCRPD. (Paragraph 92)

**18.** We consider that the benefits of ratification of the Optional Protocol to the UNCRPD are reasonably clear. The UK has led the field in pushing for the acceptance of the Convention and advocating the rights of people with disabilities to equal treatment. We have received evidence that the right to individual petition is considered an essential part of participation in the Convention by disabled people and their organisations. In addition, we consider that the participation of the UK, from an early stage, in the interpretation of the Convention and the development of its monitoring mechanisms would be valuable not only for disabled people in the UK, but for the ongoing development of the Convention at an international level. In any event, should the European Commission proceed to ratify the Optional Protocol to the Convention, we could end up with the absurd situation that disabled people in the UK could take their cases to the UN, but only in relation to areas of law or policy where the EC had exercised competence, not purely domestic legislation or administrative action. In the field of equality and non-discrimination this is likely to leave a limited area where the UN monitoring mechanism would not apply. We recommend that the Government undertakes to sign and ratify the Optional Protocol at the same time as it ratifies the Convention. (Paragraph 98)

**19.** As we have outlined above, we are concerned that the role of the ODI in relation to the process of ratification has been unclear. We consider that the focal point for the implementation of any international Convention should assume the responsibility for ensuring that the Government is taking all steps necessary to comply with the UK's international obligations. This requires a strong presence with clear influence across Government. Monitoring compatibility cannot be left entirely to the domestic independent mechanism, in this case, the UK's equality and human rights commissions. Government must assume a positive role in its approach to compliance. Article 33 of the UNCPRD, in our view, will not be satisfied by anything less. (Paragraph 101)

**20.** If the ODI is to act as the focal point for the implementation of the UNCPRD, we call on the Government to ensure that the Office has the full cooperation of all departments in its endeavours to ensure that the UK complies with its obligations and that equality, respect and dignity for people with disabilities are mainstream concerns throughout all areas of Government. This must include provision for effective coordination with the devolved assemblies at a high level and, if necessary, the designation of separate focal points. (Paragraph 102)

# Formal Minutes

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**Tuesday 16 December 2008**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	Dr Evan Harris MP
Lord Dubs	Mr Edward Timpson MP
Lord Lester of Herne Hill	
Lord Morris of Handsworth	
The Earl of Onslow	

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Draft Report (*UN Convention on the Rights of Persons with Disabilities*), proposed by the Chairman, brought up and read.

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

Paragraphs 1 to 102 read and agreed to.

Summary read and agreed to.

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

*Ordered*, That the Chairman make the Report to the House of Commons and that Lord Dubs 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 7 October 2008.

*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 13 January at 1.45pm.]



## Written Evidence

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1	London Autistic Rights Movement	Ev 14
2	United Nations Convention Campaign Coalition	Ev 14; 52
3	Department for Work and Pensions	Ev 15; 67
4	Letter to Ann McGuire MP, Minister for Disabled People	Ev 16
5	Letter from Ann McGuire MP, Minister for Disabled People	Ev 19
6	Janet Burton	Ev 21
7	Centre for Studies on Inclusive Education	Ev 22; 23
8	European Network of (ex) Users and Survivors of Psychiatry (ENUSP)	Ev 23
9	RNIB	Ev 25
10	TUC	Ev 27
11	Tabitha Collingbourne	Ev 29
12	RESCARE	Ev 31
13	Leonard Cheshire Disability	Ev 33
14	NDCS	Ev 35
15	Disability Action	Ev 37
16	Equality and Human Rights Commission	Ev 38
17	Alliance for Inclusive Education	Ev 48
18	Disability Equality in Education	Ev 50
19	Department for Children Schools and Families	Ev 54
20	TreeHouse	Ev 55
21	Scope	Ev 57
22	Deborah King	Ev 61
23	Spinal Injuries Association	Ev 64
24	Changing Perspectives	Ev 65
25	Ray Fletcher	Ev 65
26	RNID	Ev 66
27	Letter from Rehabilitation International	Ev 67

# Reports from the Joint Committee on Human Rights in this Parliament

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## The following reports have been produced

### Session 2008-09

First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
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### 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
Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132
Fifteenth Report	Legislative Scrutiny	HL Paper 81/HC 440
Sixteenth Report	Scrutiny of Mental Health Legislation: Follow Up	HL Paper 86/HC 455

Seventeenth Report	Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills	HL Paper 95/HC 501
Eighteenth Report	Government Response to the Committee's Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 103/HC 526
Nineteenth Report	Legislative Scrutiny: Education and Skills Bill	HL Paper 107/HC 553
Twentieth Report	Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill	HL Paper 108/HC 554
Twenty-First Report	Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 days and Public Emergencies	HL Paper 116/HC 635
Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	HL Paper 127/HC 756
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
Twenty-sixth Report	Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill	HL Paper 153/HC 950
Twenty-seventh Report	The Use of Restraint in Secure Training Centres: Government Response to the Committee's Eleventh Report	HL Paper 154/HC 979
Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
Thirtieth Report	Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill	HL Paper 172/HC 1077
Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079

#### Session 2006–07

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
Second Report	Legislative Scrutiny: First Progress Report	HL Paper 34/HC 263
Third Report	Legislative Scrutiny: Second Progress Report	HL Paper 39/HC 287
Fourth Report	Legislative Scrutiny: Mental Health Bill	HL Paper 40/HC 288
Fifth Report	Legislative Scrutiny: Third Progress Report	HL Paper 46/HC 303

Sixth Report	Legislative Scrutiny: Sexual Orientation Regulations	HL Paper 58/HC 350
Seventh Report	Deaths in Custody: Further Developments	HL Paper 59/HC 364
Eighth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005	HL Paper 60/HC 365
Ninth Report	The Meaning of Public Authority Under the Human Rights Act	HL Paper 77/HC 410
Tenth Report	The Treatment of Asylum Seekers: Volume I Report and Formal Minutes	HL Paper 81-I/HC 60-I
Tenth Report	The Treatment of Asylum Seekers: Volume II Oral and Written Evidence	HL Paper 81-II/HC 60-II
Eleventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 83/HC 424
Twelfth Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 91/HC 490
Thirteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 105/HC 538
Fourteenth Report	Government Response to the Committee's Eighth Report of this Session: Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9 order 2007)	HL Paper 106/HC 539
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 112/HC 555
Sixteenth Report	Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights	HL Paper 128/HC 728
Seventeenth Report	Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers	HL Paper 134/HC 790
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume I- Report and Formal Minutes	HL Paper 156-I/HC 378-I
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume II- Oral and Written Evidence	HL Paper 156-II/HC 378-II
Nineteenth Report	Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning	HL Paper 157/HC 394
Twentieth Report	Highly Skilled Migrants: Changes to the Immigration Rules	HL Paper 173/HC 993
Twenty-first Report	Human Trafficking: Update	HL Paper 179/HC 1056

# Oral evidence

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## Taken before the Joint Committee on Human Rights

on Tuesday 18 November 2008

Members present:

Mr Andrew Dismore, in the Chair Bowness, L Dubs, L Lester of Herne Hill, L Morris of Handsworth, L Stern, B	John Austin Dr Evan Harris Mr Virendra Sharma Mr Edward Timpson
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*Witnesses:* **Jonathan Shaw**, a Member of the House of Commons, Minister for Disabled People, **Mr Richard Timm**, Deputy Director, Civil and Human Rights Division, Office for Disability Issues, Department for Work and Pensions, and **Ms Simmy Viinikka**, Senior Principal Legal Officer, Department for Work and Pensions Legal Services, gave evidence.

**Q1 Chairman:** Good afternoon, welcome to our evidence session on the UN Convention on the Rights of People with Disabilities. We have Jonathan Shaw, MP, who is the Minister for Disabled People, and he is joined by Richard Timm, the Deputy Director, Civil and Human Rights Division in the Office for Disability issues in the Department for Work and Pensions, and Ms Simmy Viinikka, who is the Senior Legal Officer in DWP Legal Services. Welcome to all of you. Jonathan, do you want to make any opening remarks?

**Jonathan Shaw:** Chairman, thank you very much, I would like to make an opening remark. We very much welcome the Committee's interest in the UN Convention, and this opportunity to talk about the Convention and where we are in terms of progress towards ratification. Perhaps it is helpful if I address what is probably the most pressing issue first: will we ratify it by the end of this year? The short answer is that I regret to say "no". Since the day that we signed the Convention in March 2007, the Government's intention has been to achieve ratification at the very earliest opportunity. In saying that, my predecessor Anne McGuire set an enormously challenging task when we said we wanted to ratify it by the end of 2008. I say that because the average length of time to ratify such conventions is more like four years. We have made good progress, however, and we will have the opportunity to explore this and what remains to be done during the course of our discussion. Given the steps that remain, my ambition is to ratify in the spring of 2009. I know that this will come as a disappointment to disabled people and their organisations, who have been frustrated at the pace of the ratification process has not been quicker; and indeed it may have appeared that it might not happen at all. Therefore, I would like to make very clear both my personal commitment to the Convention and confirm that whilst it is not achievable this year, it does remain the Government's intention to ratify. I know there will also be frustrations about the terms on which we ratify, and a sense that if we do so with reservations

or interpretive declarations, that this is an indication of failure of commitments to the principles of the Convention and that is absolutely not the case. The Committee will know that the MoD are considering a reservation in respect of armed services. The Home Office is considering another reservation in respect of immigration. DCSF are considering a declaration and a reservation in respect of education. In addition, Chairman, the DWP has identified an issue in respect of benefit appointees, and is considering a reservation of Article 12(4). This is a small package of possibilities that will need to be agreed collectively across Government. If there are reservations, when we ratify this it does not imply any lack of respect for human rights for disabled people. The Government has always recognised that the Convention is a powerful and compelling statement for disabled people both in the United Kingdom and abroad to be able to enjoy the same human rights as anyone else. That is why we signed the Convention and will ratify it.

**Q2 Chairman:** Thank you for that. We will be asking you some more detailed questions about the timetable and the questions of reservations, and we will deal with declarations later on. You have focused on the downside in a way. Can we start on the more positive side and ask you how you think people will benefit from the ratification?

**Jonathan Shaw:** The Convention, as you will all know, Chairman, is a very detailed document, and I would like to take the opportunity to pay tribute to my officials and my predecessor for the hard work they have undertaken in order to boil down to a few reservations. If you look at the detail of the Convention, it covers all areas, and the Government is content that our existing policy and legislation fits in with that Convention. I suppose it is a demonstration that the Government is committed to working at home and abroad to ensure that human rights are enjoyed by all people, all disabled people. Importantly as well, the Convention will provide an important part of the analysis and benchmarking as

we develop our policies going into the future. I think it also enables us to reflect, with some justification, on the progress that we have made so far in areas such as housing, lifetime homes, access to education, particularly higher education, and our recent policy on our independent living strategy, and also the Welfare to Work Programme.

**Q3 Chairman:** Can we look at some of the problems now! The UK has been closely involved in the negotiation of the convention. There was a great trumpeting of the fact that we were signatories to the Convention on day one.

**Jonathan Shaw:** Yes.

**Q4 Chairman:** Yet it was only more than a year later in the Government's response to our report on adults with learning disabilities that the question of reservation was first hinted at. Why has it taken a year to get to that position, bearing in mind how much work had been done earlier in terms of negotiating the Convention? You must have known—not you personally but your predecessors, or the department must have known at that stage what the concerns were, having signed the thing and negotiated it. Why was it over a year before you actually came forward and said there were these problems?

**Jonathan Shaw:** First, I think the reservations for the MoD will not come as any surprise to the Committee given it does not have to comply with the DBA. In terms of signing the Convention and the journey towards ratification it has required an enormous amount of work. In my predecessor's letter to you in May she referred to a number of areas, for example cultural services in independent living that there might be reservations on; but you have not heard me refer to those in my opening statement. It is the job of work we have been getting on with. Colleagues from the Office of Disability Issues and indeed my predecessor Anne McGuire worked very hard across all Government; and when one looks at all of the articles that Government departments need to consider, and then seeking clearance and agreement with colleagues, it is a huge task. I think Anne did give an indication of areas we were working on, and of course during those discussions other areas have come up. We take these conventions extremely seriously and go through the detail and drill down, and things come up as well, and obviously that requires discussion and legal advice. I have referred to benefit appointees and power of attorney.

**Q5 Chairman:** Why was this work not done at the time of negotiation of the Convention, before signature?

**Jonathan Shaw:** We sign up to the principles of a convention and then it is for state signatories to go through the detail. Obviously, before the Convention is ratified it is subject to scrutiny, and it will be subject to scrutiny by both these Houses.

**Q6 Chairman:** It is obviously disappointing to hear about the delay. What is your intention? Do you think it is better to try and get rid of all reservations

so far as you can, which may delay ratification; or to ratify the reservations first and then work through the reservations, as has happened with the Convention of for Rights of the Child for which the Home Office is now going to lift the reservation?

**Jonathan Shaw:** There are opposing views on this and I am aware of that, but I believe the advice from the Commission on Human Rights said to us that they thought we should ratify obviously with reservations. That is our intention. Obviously, we want there to be as few as possible and that is why we have undertaken the work that we have.

**Q7 Chairman:** What is your deadline now for ratifying?

**Jonathan Shaw:** Chairman, you will be aware that there will be important debates and scrutiny within Parliament, and we are aiming to get the Convention ratified by spring. I cannot give you an exact date of spring, but that is what we are aiming for.

**Q8 Chairman:** Before the Easter recess?

**Jonathan Shaw:** In spring, Chairman.

**Q9 Dr Harris:** Would July count as spring?

**Jonathan Shaw:** I would not say July would count as spring, Dr Harris! Blazing June—that does not give a spring descriptive!

**Q10 Chairman:** I think we would be extremely concerned to hear it was not to be ratified by the Easter recess, which is very late spring really!

**Jonathan Shaw:** Your concern is noted, Chairman.

**Q11 Chairman:** We would probably expect to see you again, if you are still in the same position bearing in mind re-shuffles and so on pretty soon after the Easter recess, if there was not ratification by Easter.

**Jonathan Shaw:** Thank you Chairman.

**Q12 Lord Lester of Herne Hill:** Would you ask your officials to brief you on what happened in 1974 to 1976, when I was adviser to the Government and we ratified both the UN international covenant on civil and political rights—a vast document—and the UN Convention on economic, social and cultural rights within two years from scratch—from scratch? Those were massive documents, and I do not understand at all why it is not possible to do this comfortably within two years on a convention that is already covered by domestic law quite admirably. Could you explain to me what it is that is causing this extraordinary slowness in the process, because I do not understand it, having been involved previously, as I say, more than thirty years ago? I do not understand this four years thing or any other reason for slowness. What is the real explanation?

**Jonathan Shaw:** The explanation, Lord Lester, is as I have set out to the Committee in answering the Chairman's first questions. We have undertaken this process of discussion within the Government across all the different departments. You will know better than I, but in terms of what sets us apart from other conventions is that it is practical and systematic

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barriers that we have to address that stand in the way of disabled people's enjoyment to equal human rights, and so we have to look at how this applies across the whole of the education sector, how it applies across all of the health sector, the employment sector, everything that is part and parcel of public policy and delivery. Obviously, departments have to consider those very carefully. I guess, if we are to make a comparison of some countries—I think Jamaica ratified on the very day of their signature to the Convention, and other countries—the Scandinavian countries—have signalled that they will take quite a lot longer than ourselves. Across the board it varies. The explanation that I have given to you was the one given to me, so I am appreciative of your advice and at the appropriate moment I will ask my officials.

**Q13 Lord Lester of Herne Hill:** I want to ask you about involvement with disabled communities in considering ratification, reservations and so on. We know that the Equality Human Rights Commission has been consulted confidentially by your Department about these matters. We know that the Commission has complained that they are inhibited by the confidentiality of that process from really being effective in dealing with it. That has given some cause for concern to us, as it has to the Commission. Leaving aside the Commission itself, and what you say about that, what steps are you now taking to be more transparent, or to be in any sense transparent about exactly what you are proposing with those who are most affected by what you are doing, namely the disabled in this country?

**Jonathan Shaw:** We have engaged with disabled people and their representatives. I have heard the criticism that it may not have been as much as people are accustomed to, but obviously we have Equality 2025, which we established as part of our commitment to ensuring that disability issues are addressed across Government; and that body, which is made up of disabled people, have been providing advice to Government departments, as have my own officials in the Office of Disability Issues. Government departments need to have some degree of confidence that their discussions are confidential in order for them to discuss policy options; that is the normal custom and practice. The job of work has been one where we have had discussions internally in order that we can then provide the Committee, Parliament and the wider public with our position going forward. That will then of course be subject to parliamentary scrutiny and doubtless civic society will have discussions and input into where we have got to. I feel it is reasonable for me to emphasise that the number of reservations on one interpretation is a modest amount when considering all of the articles within the convention.

**Q14 Lord Lester of Herne Hill:** I understand that and we will come to that later, but I do not understand when you talk about discussions with the Equality and Human Rights Commission being internally. The Commission is an independent watchdog of human rights and surely they should be uninhibited

in being able publicly to criticise policy developments that they disagree with? They are concerned about that and I would like to ask you whether you share that concern?

**Jonathan Shaw:** I am sorry if I was inadvertently mixing up Equality 2025 with the Commission—that was not my intention. Can I ask Mr Timm to provide a bit more clarity on the specific role of advice and the Commission?

**Mr Timm:** As the Minister has said, we are working within Government to try to remove the need for any reservations and interpretive declarations, and those discussions have been in confidence within Government. As you rightly say, because we have the Equality and Human Rights Commission as an independent watchdog—for want of a better phrase, we did want to talk to the Commission, but when I approached the Commission it was on the basis that we were talking in confidence, and that enabled me to explain to them what the detail of the concerns of various departments were. It enabled them to have a think about it and come back with some ideas that I was then able to use. As far as I was concerned, it was part of the process of working through the list of potential reservations and declarations. That was why, when I first approached the Commission, it was on the basis of confidentiality.

**Q15 Lord Lester of Herne Hill:** I do not understand the need for secrecy! We are not talking about terrorism or nuclear secrets; we are talking about whether a convention creates a particular practical problem so serious that we need to enter into a reservation of the kind the European Commission and others have not done. Why is that a matter of secrecy? All you have to do is publish a paper that highlights the problem, and then ask everyone, including the disabled, what their responses are, in advance of your taking decisions.

**Jonathan Shaw:** As I said to you, Lord Lester, the convention covers every aspect of Government policy, and Government departments whose decision it is to sign up or to say whether they want interpretations or reservations as it is also that of the devolved administrations as well. So in order for us to reach an agreed position, and where there might be differences in a discussion, we develop that policy internally, in the say way we might develop a health policy or an education policy internally before providing our thinking to the public. That is where we are now, as we are on the cusp of entering into the parliamentary scrutiny.

**Q16 Chairman:** It is not exactly open government, is it? Look, for this session we pulled out the evidence and lots of disabled organisations have written to me with their views about what they think and the reasons for their reservations and what their answers to them are. It may well be that if you actually got involved with consulting organisations directly a lot of your fears and concerns would have been dealt with reasonably easily and quickly by their responses, saying X, Y and Z—this clearly is misinterpretation, or this is what we can and cannot do. A lot of the problems you have spent 18 to 24

months now wrestling with would have gone away a lot earlier. As Lord Lester says, this is not a huge state secret. What is the problem in saying, “Look, we have got a problem and we will come to this in more detail later on; the Army says they want to make sure they do not have people who are blind so they go on the front-line—what is your answer to that?” Well, that is pretty well the answer. It is self-evident. The MoD spent the best part of two years arguing about it.

**Jonathan Shaw:** What I want to say to you, Chairman, is that we need to look beyond the boundaries of Whitehall, and that of England.

**Q17 Chairman:** That is exactly what I am saying to you. Why have you not asked the disabled organisations their views on what your problems are?

**Jonathan Shaw:** We have had discussions with disabled organisations, both my predecessor and I; and they have made clear their views on a number of the points you have just made. However, in order to develop policy, particularly as we live in a devolved world where there are administrations of other political persuasions, it is important that we are able to develop policy. Each of the parties involved in that can have a degree of confidence that that discussion is confidential. Otherwise, one could envisage a whole series of rather unpleasant scenes within which the matters that we are focusing on could be delayed somewhat. As I say, we have arrived at a position where there are very few reservations. That has been our thinking and that is the way we have approached it.

**Q18 Chairman:** That is Alice in Wonderland, is it not?

**Jonathan Shaw:** I do not agree.

**Q19 Chairman:** It has been delayed for the best part of two years through this process, whereas you might have had the answers much more quickly. I am not saying you have to tell us exactly what you talked about with the Scottish administration or the Welsh administration, that is fine; but if you say, “We have got a problem with this particular thing; this is what the problem is; is there an answer to it?” you would have got the answer in a matter of weeks, like we have when we put out our call for evidence—or an answer.

**Jonathan Shaw:** We did. We have received advice, and now what we have come forward with will be subject to parliamentary scrutiny and scrutiny and debate in wider society.

**Q20 Lord Lester of Herne Hill:** What I do not understand—if I may—is that in the *Governance of Britain* Green Paper for which the Prime Minister is responsible, there was a lot about the importance of a more transparent and democratic system for scrutinising treaties. I do not understand the fear within Whitehall apparently that if you now come out with what you are proposing it will affect our rights of course and the extent to which the rights conferred by the Convention to be enjoyed by we,

the people—that is what it is about. I do not understand why you do not consult “we the people” about that as well as the devolved administrations in Scotland, Wales and Northern Ireland. Surely they are the prime people that you should now be consulting at an early stage?

**Jonathan Shaw:** We have arrived at our decision on the interpretations and the reservations through that discussion with colleagues in those administrations. We have had discussions—it is not fair to say that we have had no discussions with disabled people or their organisations; we have had that, and we have received the advice from the Commission and the advice from Equality 2025, a body that we have set up of disabled people to provide us with that advice. It is not fair to say that we have operated in a silo, divorced of any discussion with disabled people or their organisations. What I attempted to do in a candid way is to provide the Committee with the process that we have gone through in order to arrive at where we have. It is not fair to characterise this that we have had no discussion with disabled people.

**Q21 Lord Dubs:** There are discussions going on between Westminster and the devolved administrations all the time on a whole range of issues.

**Jonathan Shaw:** there are.

**Q22 Lord Dubs:** I am not aware that they are all couched in this secrecy, and quite a few of them can be done openly. I do not understand the need, otherwise a lot of our relations with devolved administrations would have to be altered, would they not?

**Jonathan Shaw:** I had some experience of working with devolved administrations in my previous job, and some of those discussions were below the line in order to develop joint thinking in order that both sides were happy and to avoid a public dispute that could then lead to very firm positions, opposite positions, and then the goals that we seek to achieve were reduced. So it operates at different levels. I repeat, it is not reasonable to say or a fair reflection on the way that we have carried out this process to say that we have not had discussions or sought the advice of disabled people and their organisations.

**Q23 Lord Dubs:** I think you said a few minutes ago that you would be ready in the spring to publish.

**Jonathan Shaw:** Yes.

**Q24 Lord Dubs:** Would there be an advantage in publishing in draft what you have in mind now, so that people, organisations and parliamentarians can all look at this and consider what it is you are doing rather than simply producing it at the last minute when it has all been finalised. Surely, it would be in keeping with the policy of publishing draft bills and so on for your reservations to be published in draft form now?

**Mr Timm:** We hope to publish an explanatory memorandum, which will provide an opportunity for each of the departments to give their detailed



reasoning as to why we want the interpretations or the reservations ahead of parliamentary scrutiny, Lord Dubs.

**Q25 Chairman:** Presumably you are only going to publish an explanatory note at the same time you publish the ratification?

**Jonathan Shaw:** That would be my understanding.

**Q26 Chairman:** To come back to Lord Dubs's question, why can you not—if, like we do for all sorts—the Home Office can publish the Immigration Bill in draft in advance, why can you not publish your reservations in advance so that people can think about it beforehand?

**Jonathan Shaw:** These reservations are where government departments have arrived at through this process and they will be subject to parliamentary scrutiny with a detailed explanatory memorandum, but I will reflect on the point that you have made, Chairman.

**Q27 Lord Lester of Herne Hill:** Is that what you mean when you say, “subject to parliamentary scrutiny”? Parliament has no power, does it? It is not like a bill.

**Jonathan Shaw:** No.

**Q28 Lord Lester of Herne Hill:** If you, in exercising your prerogative powers, decide on the terms of ratification and reservations and so on, all that Parliament can do is to express its views, but you have in the end absolute power. Is that not therefore why we need to know what you are considering at an early stage to try to persuade you that some of what you are thinking might be altered?

**Jonathan Shaw:** Hopefully that is part of this process, Lord Lester, and obviously we will come on to discussing the few reservations and the interpretation that there is. Obviously, I will have to justify the Government's position, and there is a whole series of committee stages that we will go through.

**Q29 Lord Morris of Handsworth:** I have a general observation from what you have said The Committee, and indeed those with disability who would benefit from ratification, will draw some conclusion; and from what you have said you are leaving a conclusion behind that it is either lack of commitment on the part of the Government or lack of leadership. Which is it?

**Jonathan Shaw:** I do not think that is fair at all, Lord Morris. I refer to a number of the practical steps that this government has undertaken to improve the lives of disabled people, and we have also set out our ambition of equality for disabled people into the future. Signing the Convention we take extremely seriously, and when you look at the various articles and measure that against the policies and the commitment and the money . . .

**Q30 Lord Morris of Handsworth:** What is important today is not so much what you fail to have done in the past but those with disability and the

Commission will be interested in the future, the commitments that you can offer as to what you will now do and the Department will do as of today's hearing.

**Jonathan Shaw:** As I keep saying, I am happy to hold my hand up, and where we have—you say “failed”—and perhaps we have not achieved what we might want to in certain aspects of policy, but I think we have achieved a great deal, not least employment levels, which are a 10% increase under this Government with programmes such as Access to Work and Pathways to Work, under which many hundreds of millions of pounds are put into. That is a statement of our commitment. There are further resources now and going forward into the future, as you said.

**Q31 Mr Timpson:** Can I just pick up on the time when you say ratification will take place and try to understand a bit more about trying to get some transparency into the reasons why we have to wait even longer than we originally anticipated! You have spoken about trying to put together advice and also having discussions, and I see those as two very different things—seeking advice from people and having discussions with people. When you spoke about advice and told us about the Commission and Equality 2025, are you still seeking advice, or have you sought advice? Have you had further meetings to seek advice? Where are you, so we understand why we have this further delay?

**Jonathan Shaw:** The delay is because we had those detailed discussions with colleagues across departments and devolved administrations, and we have been working through areas of policy. My predecessor, Anne McGuire, worked tremendously hard and was absolutely committed to this Convention and signalled to the Committee in her letter in May that there were areas where we might seek reservations on cultural services, for example, and independent living as another example. I am pleased to say that we have worked through those and there are not reservations on that, so that is an example of some of the work that we are undertaking. We want to see as few reservations as possible, and so that is why we have been getting on with that job. We seek the advice of the Commission, and we appreciate that advice in order to inform our discussions with other Government departments and the devolved administrations. Of course, Equality 2025 that we have set up, made up of disabled people, provides advice for other Government departments as well, and they are cross-cutting organisation that we have set up. So we receive advice and have discussions about that advice and consider it before we reach a decision. Ultimately it is for Ministers to make decisions.

**Q32 Mr Timpson:** As we sit here today, are you at the stage where you are starting to write up this memorandum, and are you at the stage of writing up your draft, or are you still having discussions and seeking advice?

**Jonathan Shaw:** The final domestic affairs rights round needs to be undertaken, so there is some process within Government for things to be absolutely final. Of course, any views that we are seeking between now and then we will obviously take account of. I go back to the point that it is not fair or reasonable to say that we have not received advice or had discussions with disabled people or their organisations.

**Q33 John Austin:** I apologise for being late. I accept what you say. I think enormous progress has been made on issues of equal rights and particularly on the disabilities issue. I think all of us round this table share your view that we want to see no reservations, but as few reservations as possible, but you appear to be on the defensive and you talk about the discussions with other departments and I recognise that other departments may have particular issues on particular subjects, but it would be much to your benefit and the Government's benefit if those discussions were much more open, if the people sitting behind you knew the precise nature of the difficulties that some of the departments have on some of the aspects, and what those reservations are, and if there was much more open debate. It does appear that we cannot have that open debate.

**Jonathan Shaw:** I can see why you are saying that I am on the defensive, because I am being accused of certain things, so I have to defend my position as I see it.

**Q34 Chairman:** Do not take it personally.

**Jonathan Shaw:** No, I am not taking it personally; it is a very important point, and I am enjoying the debate because this is an issue of such magnitude, one that I take seriously, and I enjoy it because I am proud to be the post-holder that will seek to ratify at this Convention. When I said to Mr Timpson, Mr Austin, that there were examples of where we flagged to the Committee—the Committee has that material and we have had an exchange of correspondence, or my predecessor did—that cultural and independent living would be areas that we would seek reservations on. So I am not defensive in saying we have worked through those. We have achieved your aspiration to have no reservations, and ours, to have as few as possible, so we have worked on that, so rather than perhaps being defensive I should be proud of our achievement—and indeed I am.

**Q35 Mr Sharma:** Mr Shaw, what steps have you or your predecessor taken to try to persuade individual departments that reservation or imperative declaration may not be necessary?

**Jonathan Shaw:** Yes, well I think it is an important point that we emphasised. We have had discussions and I am not averse, and certainly my predecessor would not have been averse, to twisting a few arms when necessary, but we would not twist arms in public; we would have those discussions with colleagues in private. We would not have these disagreements in public because that is not the way that collective Government does its business. We have sought to provide advice through the Office of

Disability Issues and the excellent work of Equality 2025 to other departments, and we have seen the elimination of cultural services and that of independent living; but in that work, as I said in my opening statement, what it has done is thrown up the issue of benefits appointees and power of attorney. It has not worked all one way.

**Q36 Mr Sharma:** Can you explain why the Home Office are pressing for reservations or based on their existing immigration reservation to the Convention for the Rights of the Child (a reservation which the Home office has already agreed to remove)?

**Jonathan Shaw:** Yes, they have agreed to it, and I think the Home Office would not say that their desire to have a reservation is related to that of the Convention for Children. It is essentially about immigration and particularly public health, where the Home Office may wish to screen individuals entering the country, or they may wish to do it in the future. That is something that I think all Member States would seek to want to do. I believe that all Member States have the power to impound an aeroplane, for example, if they had a concern about the passengers' public health. Obviously, that has to become a paramount issue; you could not have people getting off the plane who had a particular disease that is going to cause the general population to be affected.

**Q37 Dr Harris:** That is a slightly different issue from screening because there is clearly a threat to public health in that case; whereas screening, for example for TB—there is not a shred of published evidence—there may be some secret evidence of course—but there is no published evidence that screening programmes offer any protection to the public health, and therefore it would not be motivated by public health but for other reasons. Are you saying that the Home Office is seeking room for manoeuvre to bring in screening arrangements that are not related to protection of public health on a clearly proportionate level, because you look at the evidence when you look at proportionality, do you not?

**Jonathan Shaw:** I am sure that the intention of the Home Office will be to have a proportionate level. Their policy will be proportionate and it will be for a public health interest. When we publish the explanatory memorandum, the Home Office department will be able to provide the detail.

**Q38 Dr Harris:** But you could reassure the Home Office, could you not, that they do not need a reservation if it is to take action that is to protect public health and is proportionate? As you say, all companies would need to do that with SARS, for example; they would not need a reservation.

**Jonathan Shaw:** It is about what the Home Office may wish to do in events unforeseen in the future. As I say, they will be able to explain in detail their reservation when we publish the explanatory memorandum. It is for departments to determine, just in the same way it is for devolved administrations to determine whether or not they

have reservations. It is the job of my Department and my officials to provide advice and discussion about areas where they might want reservations; but, as I say, the Home Secretary has made clear to us that that is where she wishes to have a reservation.

**Q39 Chairman:** This is pretty unsatisfactory, is it not, because what is going to happen is that you have discussed this behind closed doors with the Home Secretary? The Home Secretary has come to the conclusion she wants a reservation. No matter how unreasonable the reservation may appear to the outside world, if it were consulted and put its views forward, you accept what the Home Secretary says even though you are Minister for Disabilities and you may not be arguing for this. It is then published as part of the final document for presentation to Parliament without any opportunity for amendment, discussion, or debate, as to whether or not the reservation is justified, or in particular that it could be removed. This comes back to our earlier line of questioning. Is it not better for that reservation to be published in draft first so that there can be discussions as to whether in fact it is justified? Evan Harris has just given you an example of why that particular one, frankly, is wrong because it would apply to every single thing that could be ratified because you have the same powers. Would it not be more sensible to publish it in draft form first to enable those discussions to take place with civil society and the NGOs and indeed with relevant parliamentarians before presenting the final document on a take-it-or-leave-it basis because when it does come as you are proposing so far, it is a “take it or leave it” document, no matter how unreasonable under detailed scrutiny it turns out to be, or how reasonable it may be?

**Jonathan Shaw:** As I said earlier, I will reflect on that advice from you, Chairman. The Home Office have said that they firmly support the objectives of the Convention, but they wish to avoid any possibility of there being a conflict now or in the future between measures that might need to regulate entry into the UK in the interests of protecting public health on the one hand and our international obligations on the other. That is the only reason they are entering this reservation.

**Q40 Lord Lester of Herne Hill:** They are talking about Article 18, are they not, which is the one that deals with liberty of movement?

**Jonathan Shaw:** My lawyer says “yes”, sir, so yes!

**Q41 Lord Lester of Herne Hill:** Can you help me because I always like to be a bit specific if possible?

**Jonathan Shaw:** So I have heard.

**Q42 Lord Lester of Herne Hill:** What is there in the language of Article 18 that gives rise to any problem? Article 18 is recognising the rights of people with disabilities to liberty of movement, et cetera. Our immigration laws contain ample powers to restrict movement. I do not understand how Article 18 can give rise to any problem with regard to our existing laws which is not encountered, if it was a problem,

by the other Member States of the EU and the other member states of the world. What is it that is special about this language and this country that requires the Home Office to enter a reservation? I would like to be specific about example.

**Jonathan Shaw:** As I understand it, it is not just this country, Australia has . . .

**Q43 Lord Lester of Herne Hill:** Leave aside Australia and take just the United Kingdom.

**Jonathan Shaw:** Frustratingly, as I know it will be for the Committee and for people listening to our proceedings, I, as Minister for the Disabled, have a coordinating role, but I cannot seek to provide the position on detail for that of the Home Office, in the same way that I cannot for the SNP administration in Scotland. However, as I have said to the Chairman, we will publish the explanatory memorandum, and then each individual department and devolved administration can scrutinise to answer as to why in their view they needed to enter those reservations.

**Q44 Chairman:** The problem is that that is too late, going back to our earlier discussion: if you are saying, “It’s not me, Guv; I am just the front man for the Department and I am not going to justify what the Department says” so they are not going to justify it” we have not got each individual department here and it would be unrealistic for them to answer those questions, they are not engaged with anybody about what their reservations are; it is just wheels within wheels, not turning out and engaging with people about what the particular problems are, unless there is something put in draft first to allow those reservations to be debated. I think Evan is right. If somebody turns up with Bubonic Plague, whether they are disabled or not is going to be irrelevant in taking public health measures against them, is it not?

**Jonathan Shaw:** As I said, the Home Office have said they want to ensure that there cannot be a conflict in terms of their need to take action in the future to safeguard the public’s health. It is about ensuring that they have got that flexibility as opposed to the international obligations.

**Q45 Dr Harris:** I am reassured from what you have said—and this is my last question before Mr Sharma comes back—to Lord Lester that this is not about citizenship, that a requirement for people seeking citizenship to engage in voluntary work—and I am not saying disabled people cannot and generally do not but some might not be able to or might find greater challenges in doing so—that is not the reason, I think, from what you have said, that the Home Office is seeking a reservation on citizenship; and therefore it not be able to expect, and has to have regard, to the ability of people to do voluntary work in order to earn citizenship. This is an issue that was raised with us on craft citizenship that everyone has to . . .

**Jonathan Shaw:** If that is an issue that we have worked through, then—my lawyer says that we have not heard of that. My note on this particular

reservation, Dr Harris, says and concludes this is the only reason why we are continuing this reservation, so it is only on a public health concern.

**Q46 Dr Harris:** Then you may wish to, during consideration of that bill, consider whether it is acceptable to put requirements for active voluntary work as a requirement for citizenship, which might disadvantage unfairly people who are not in a position to do that—some people. That is the corollary of that.

**Jonathan Shaw:** My officials have noted it.

**Q47 Baroness Stern:** I would like to move on to ask you a couple of very easy non-controversial questions about the European Commission—really, nice questions!

**Jonathan Shaw:** I bet they are not!

**Q48 Baroness Stern:** I understand that the European Commission has published its proposals for ratification of the Convention, which it will do itself. You, presumably, have seen the European Commission proposals for ratification, so can you tell the Committee how long you expect it to take for the Community to agree to ratify?

**Jonathan Shaw:** Having spent time discussing agricultural policy and fisheries policy in my previous incarnation, my previous job, I do not know, but I think we expected to see something at the early part of this year. January this year we originally expected to receive the Commission's publication, but we have only just received it. Our initial view is that the legal basis for conclusion or ratification and competence requires careful consideration and scrutiny across Government. I can hear what is coming next from the Chairman, as to whether that will be a transparent process. Obviously, this will be something that other committees of the House, notably the European Scrutiny Committee, I am sure, will have some input into, and as is their wont, having appeared in front of their long sessions, to justify the UK position on particular parts of European legislation, they will want to have a look at that. We will be looking at the detail and having discussions both internally and with colleagues and Member States.

**Lord Lester of Herne Hill:** Did I mis-hear you? Did you say September?

**Q49 Baroness Stern:** May I just finish this bit? Are you intending to wait for the European Commission process to be complete before you have ratification?

**Jonathan Shaw:** We have a duty of loyal cooperation, as do all Member States, but we do not see that we have to wait for the Commission before ratification, Lady Stern.

**Baroness Stern:** I told you they would be easy!

**Q50 Lord Dubs:** Looking at other countries in the EU and outside, do you have any information about whether they are having the same difficulties with this Convention as you are; or are they more open in their approach?

**Jonathan Shaw:** Some countries have ratified, Lord Dubs, and others have not. We wanted to undertake the exercise that we think is appropriate to considering it in relation to our domestic laws and the policies that we have implemented in recent years and intend to in the future, so it has taken us this time. There will be other countries—I am not going to do various lists but those are available and, as I say, some have and some have not, but I do not think that we are in any way lagging behind—far from it; I think that our signature that we expect to see in the spring—we will be up there.

**Q51 Lord Lester of Herne Hill:** Can I ask you a different kind of question about the majority decision of the Law Lords in the *Malcolm* case? What changes does the Government think are necessary to reverse that majority decision and comply with the Convention obligations to eliminate all forms of discrimination?

**Jonathan Shaw:** I have read some of your exchanges with my colleague Lord Mackenzie, and I think you cited the example of a blind person wishing to enter a restaurant who uses a guide dog. My legal advice, Lord Lester, is that whilst unwelcome the *Malcolm* Lewisham case does not prevent us from ratification, but we will be seeking during the passage of the Equality Bill to change that decision. I do not know whether Mr Timm can give you any more detail than that.

**Mr Timm:** Basically, we are hoping that we can have a consultation maybe beginning around the end of this month, so that we can go out to people with a specific proposal. The final “i”s and “t”s have not been crossed and dotted and whatever else you do with those, but our intention is to propose a move to indirect discrimination as a way of rectifying the *Malcolm* judgment and ensuring that in addition to reasonable adjustment and direct discrimination, which we will introduce through the Equality Bill where it does not already apply. In effect, you have direct discrimination, indirect discrimination, reasonable adjustment, along with victimisation and harassment, as now.

**Q52 Lord Lester of Herne Hill:** That is an extremely helpful and positive answer for which I am most grateful.

**Jonathan Shaw:** Gosh—half a tick!

**Lord Lester of Herne Hill:** The only thing you have not mentioned, and it is not for now, is the nature of the comparison that the *Malcolm* decision lights, but I imagine that will be something you will be considering in your consultation paper. Thank you very much.

**Q53 Lord Morris of Handsworth:** I do not want to spoil the party!

**Jonathan Shaw:** Go on!

**Q54 Lord Morris of Handsworth:** Just sticking with Mr Timm's view about consultation, with reference to the Equalities Bill, will this consultation be

published before the Government ratifies the Convention; and if not how do you propose to consult in order to meet the requirements?

**Jonathan Shaw:** You are not spoiling the party—it can continue in full flow! We will publish well in advance before ratification.

**Q55 Lord Morris of Handsworth:** You will?

**Jonathan Shaw:** Yes.

**Q56 Mr Timpson:** Can we move on to some of the nuts and bolts now, looking at a specific issue under Article 24, the right to education. We understand that you are proposing to seek a reservation. As you will be aware, the right to education in the Convention is subject to the principle of progressive realisation. We have had a number of submissions from various groups that have come to the view that the Government has really misunderstood this provision and the nature of inclusion within it, and that to try and seek a reservation has been far too cautious because of the principle of progressive realisation. It is not as if, as soon as you ratify the Convention, that the very next day all the special schools will close because it is progressive to reach the point of realisation that you have time to plan and change the environment in which this Convention has to sit within. Can I ask you first of all, giving you that backdrop, to tell us whether you are still seeking a reservation and to justify the basis on which you are doing so?

**Jonathan Shaw:** Yes, we are seeking a reservation and an interpretive declaration, and it is the DCSF's position, and they do so because it is their belief that inclusion includes education provision that is outside of the mainstream for the reasons that this may be what certain children require and also taking account of parental wishes.

**Q57 Mr Timpson:** On that basis does your desire to give weight to parental choice or parental wishes override your aspiration to provide all disabled children with an inclusive education?

**Jonathan Shaw:** No. The department's view is that having that special educational needs provision that may be outside of the mainstream is inclusive because it may be that for some children that provision is not possible within the mainstream provision, and also it is the views and the wishes of parents, and within the interpretative declaration, that is why the department have made that, they do not see that they would want not to have that arrangement or that possibility, but certainly it is the Government's policy that we have sought to mainstream a great deal of education provision, not always with the support of all parties in this House, I might say.

**Q58 John Austin:** Can I turn to the issue of the Ministry of Defence and their reservations? I know that the reservation which is being argued is in accordance with the provisions in the DDA. You will know that the HRC has given evidence to us suggesting that the reservation in the DDA should go. There really is not any implication in the

Convention that the Ministry of Defence or the Army or any of the Armed Services have to recruit people who are not capable of doing the job, is there? What is the basis of the reservation? We know that as a result of injury and disability places are being found within the Armed Services for people for employment. Nobody is asking someone with a disability to be placed in an inappropriate place of employment. I really cannot see why the MoD is putting forward this reservation. I would certainly suggest that you might consider the EHRC's view that we should amend the DDA as well to take account of that.

**Jonathan Shaw:** You will know of the reasons why the MoD wanted to be exempt from the DDA. It really wants to be able to determine the service needs of the Armed Forces and it does not wish to be second-guessed on that, and so it stands that it is their wish to have this reservation and it will not come as a surprise given the history on the DDA. You mentioned employment, I think, Mr Austin. It is about service, as the Armed Forces would see it, and they want to have the flexibility to be able to deploy people as they see fit. Principally, every man and woman who is in the Armed Services could be deployed for front-line service but, as is patently obvious, that would not be possible or practicable and so, as you also say, there are a number of personnel who are, as it were, redeployed to jobs because of a disability and that they may become disabled due to being in theatre, of which our forces are in a number at the moment, and so they would want to be able to deploy people and have that flexibility to make provision within their own numbers rather than perhaps jobs that could be undertaken by everybody, including disabled people, to be open to competition, as it were. That would be entering into the traditional employment arrangements.

**Q59 John Austin:** Has any other country that has ratified the Convention entered a reservation in respect of the Armed Services?

**Jonathan Shaw:** That is an excellent question, and I will ask. I do not think so, no, are the two answers I was given.

**Q60 John Austin:** So we are out on our own on this one?

**Jonathan Shaw:** It would appear so, yes.

**Q61 Chairman:** So none of our NATO partners who have ratified already has any concerns that somehow ratifying the Convention is going to mean that the people going over the top are going to be in wheelchairs or cannot see where they are going. They do not have that problem. France and Germany are about to ratify without reservations. Austria, Hungary and Spain have already ratified. They do not have this problem. They have got perfectly efficient armed services. Why do we? Do you seriously think that ratifying the Convention without this reservation will force the Army to put disabled people in the front line?

**Jonathan Shaw:** Germany and France are obviously countries with a considerable amount of armed forces personnel and they have not ratified, Chairman.

**Q62 Chairman:** But they are managing that without reservation.

**Jonathan Shaw:** What I think is the view of Government and that is how we arrive at these positions. I can give you some outline of some of the detail that has caused departments of devolved administrations to want to enter into reservations, but obviously the detail of that will be published with the explanatory memorandum.

**Q63 John Austin:** Apparently the MoD is arguing a consistent line with the exception of the current DDA.

**Jonathan Shaw:** Yes, sir.

**Q64 John Austin:** Is it not time to revisit the DDA exception?

**Jonathan Shaw:** I do not doubt that in the course of the Equalities Bill these issues will arise and members will want to discuss this matter in both Houses.

**Q65 Chairman:** You have referred a few times now to the devolved administrations. Have the devolved administrations specifically requested any reservations themselves that you were not previously thinking about doing?

**Jonathan Shaw:** I am advised, Chairman, that they concur with England on education.

**Q66 Chairman:** That is not what I asked you.

**Jonathan Shaw:** Is it not?

**Q67 Chairman:** No.

**Jonathan Shaw:** Oh, dear.

**Q68 Chairman:** I asked you not whether you agree with what the devolved administrations have done but whether they have asked for any that you were not proposing in the first place?

**Jonathan Shaw:** On the Army, obviously not. In terms of social security, obviously, that is UK-wide, but clearly education is devolved and the Home Office also is UK-wide. Are there other areas?

**Ms Viinikka:** There have been discussions about a couple of areas where there was a particular concern but I think those areas have been resolved. There were specific requests.

**Q69 Chairman:** So they made specific requests and you have dealt with them?

**Ms Viinikka:** Yes.

**Q70 Chairman:** So when we are talking about devolved administrations that is now pretty irrelevant? You have talked several times now about devolved administrations. Effectively, that is now an irrelevance to taking the discussion forward, apart from the issue of education that you have just mentioned?

**Jonathan Shaw:** In terms of we have undertaken that work. Clearly, cultural services is a matter that is devolved, and independent living, particularly in areas of social care, is an area that is devolved in one, two, three administrations, so in four administrations perhaps that have different service provision, different service delivery, we have managed to iron all of that out.

**Q71 Chairman:** Which I am pleased to hear about, but in practice now the devolved administrations are no longer an issue as far as ratification is concerned except for the issue of education?

**Jonathan Shaw:** Except for special schools, that is right.

**Q72 Lord Bowness:** Minister, can I turn to the optional protocol? As I understand it, this gives individuals the right to seek redress directly to the UN and we have been told in the past that the Government was considering its position with regard to this in the light of the ongoing review by the Ministry of Justice on a similar protocol relating to the Convention on the Elimination of All Forms of Discrimination against Women..

**Jonathan Shaw:** Yes.

**Q73 Lord Bowness:** It would be interesting to know where you were getting with that and also whether the Government is concerned about there being a flood of direct applications when I equally understand that it is the Government's view that UK legislation is very largely compliant with the Convention.

**Jonathan Shaw:** No, I do not think there will be a flood because we have confidence in our domestic legislation and you will be familiar with the fact that obviously that would have to be exhausted before a complaint was lodged with the UN Committee. You are right to highlight the review that has been going on with the CEDAW optional protocol, but we are, I can say to the Committee, in the procedural processes of seeking the views of other government departments on this and when that process is complete we will be able to announce whether we are going to sign up to the optional protocol or not. Traditionally we have not done that. The CEDAW optional protocol was a chance to have a look and find out whether indeed we did receive this flood that you refer to but we should be confident that our domestic legislation provides for an appropriate level of complaint representation, et cetera. As I say, we will be in a position in the not too distant future to be able to advise whether we will be signing up to the optional protocol. I am not saying no, sir.

**Q74 Lord Bowness:** No, I understood that. It may not have been traditional to sign up to optional protocols but this is the first time the European Community was going to ratify, and again we are advised that their proposals for ratification include the optional protocol. You said to an earlier question that we would not delay our ratification pending the European Community's ratification, but where are we going to be if we ratify with the

reservation and then the European Community ratify without? Has somebody given some thought to the general legal position that will then flow?

**Jonathan Shaw:** We are content that if we decide to sign we will sign and we can do that.

**Q75 Lord Bowness:** Forgive me, Minister. The position is that you have said we will not wait for the European Community to ratify. That is fine. It is not certain but possible from what you have said if tradition is followed that we will ratify with a reservation regarding the protocol. Your assistant is frowning at me as if I have got it all wrong so perhaps she will tell me why.

**Jonathan Shaw:** I am sure she is not frowning at you in that way.

**Q76 Lord Bowness:** I really do not mind because occasionally I do get it wrong, but if we ratify with a reservation, not waiting for the European Community, and the European Community then ratifies without a reservation, have we given thought to where we stand?

**Jonathan Shaw:** I believe we have.

**Q77 Lord Bowness:** What have we decided?

**Ms Viinikka:** I am sorry. I was confused. This is on the optional protocol.

**Jonathan Shaw:** You have confused the lawyer as well, my Lord.

**Ms Viinikka:** Yes. This is if we ratify the Convention without ratifying the optional protocol?

**Q78 Lord Bowness:** Correct.

**Ms Viinikka:** We have certainly given some thought to that situation. That would be a situation we would have to discuss carefully with our European partners, but we are hoping, from what the Minister just announced—

**Jonathan Shaw:** That sounds a bit flaky. Do you want to clarify it, Mr Timm?

**Mr Timm:** The straight answer to your question, as I understand it, is that if we do not ratify the optional protocol and the European Community does an individual in the UK might be able to make a complaint to the Committee about European legislation which in reality is a complaint about UK legislation because we have perhaps implemented a European directive, say, so it would be a back door to the treaty monitoring body.

**Q79 Chairman:** But only on EU competence?

**Mr Timm:** Only on areas of EU competence, yes, and, as the Minister alluded to earlier, in terms of the proposals from the European Commission for ratifying both the Convention and the optional protocol, discussions on those are starting very soon, this week in fact, at official level and that is one of the issues we will be talking to the Commission and European partners about, how do they see the position if some Member States do not ratify the protocol.

**Q80 Lord Bowness:** Again, as I understand it, and perhaps the Chairman does not want us to go down this road because it is a bit abstruse really, it is unusual in the sense that the Community is going to ratify for the first time. Does that really mean what it says or are there in effect legally going to be a series of ratifications by Member States because that would seem to be superfluous if individual Member States had already ratified in their own capacity as opposed to members of the European Union. If in fact the European Community is going to ratify is it something that is going to need unanimity? Does it cross into the Third Pillar of Justice and Home Affairs?

**Ms Viinikka:** We think that unanimity would be required because a lot of the—

**Q81 Lord Dubs:** So a British minister will have to vote for it in the Council of Ministers?

**Ms Viinikka:** Yes, if that were the policy.

**Q82 Chairman:** What about the same reservations that the UK Government is going to impose for the UK?

**Ms Viinikka:** Is this on the Convention or on the optional protocol?

**Q83 Lord Bowness:** We are, with respect, talking—or at least I am—from the UK's point of view about ratifying the Convention with a reservation about the protocol and the European Community ratifying the Convention with no reservation.

**Mr Timm:** Could I explain our confusion on this table? Could I just explain why we are confused?

**Q84 Lord Dubs:** That is good!

**Mr Timm:** Yes! The Convention and the optional protocol are two separate treaties, so we will ratify the Convention and take an entirely separate decision about the optional protocol. It is not that we enter a reservation in respect of the protocol. That is where our confusion was coming from. They are two separate treaties.

**Q85 Lord Bowness:** But we could still end up with a situation where the European Community ratified both and we had only ratified one?

**Mr Timm:** Yes, we could.

**Lord Bowness:** And the net effect is probably not terribly different.

**Q86 Chairman:** We could also have the rather bizarre position where we agreed with the EC ratifying the Convention without reservations whereas we only ratify it with reservations.

**Ms Viinikka:** In an area of Community competence the Community would need to turn to a reservation for that to be effective. For example, the Community has proposed a reservation in relation to service in the armed forces in its proposal.

**Q87 Chairman:** As a response to the UK position?

**Ms Viinikka:** No. It just arrived. We had no involvement in the text.

**Q88 Lord Dubs:** Could I just ask where does this lead? Suppose there are two different decisions, one in Brussels and one by the British Government. Where does that leave us? I do not understand that.

**Jonathan Shaw:** Seeking advice, Lord Dubs. As I say, the answer to signing the optional protocol has yet to be decided. It is certainly not no and the process which you will be familiar with is in train, so hopefully I will not need to seek that advice.

**Q89 Lord Morris of Handsworth:** Minister, you have talked about relationships with the devolved administrations. Will there be Convention focal points within these devolved administrations?

**Jonathan Shaw:** Yes. Each administration has its own Human Rights Commission and they are the monitoring body for us, and that is the same, I understand, in Wales, Northern Ireland and Scotland.

**Q90 Lord Morris of Handsworth:** In that case what would be the focal point that would relate to the ODI and people locally with disabilities?

**Jonathan Shaw:** The ODI provides advice and cuts across government but in terms of matters post-ratification at a devolved and a Community local level we have not had those conversations yet and much of them will be for the determination of the devolved administrations as to how they administer them.

**Q91 Lord Morris of Handsworth:** I am seeing the Convention ratified and I am seeing the ODI and other focal points in the devolved administrations. What I am seeking to explore and understand better is what the relationship in the devolved administrations would be with the ODI.

**Jonathan Shaw:** The ODI would be the focal point for the whole of the country, so I understand, but how it is chosen at a local level would be for the DAs. Perhaps Mr Timm would provide some more detail on that.

**Mr Timm:** I think probably the easiest way to answer that is to explain that as we have been going through this ratification process we have been dealing with contacts in the devolved administrations, obviously.

**Q92 Lord Morris of Handsworth:** One focal point or a number?

**Mr Timm:** We have tended to deal with one. For example, for Northern Ireland it is contacts in the Office of the First Minister and Deputy First Minister, so that is one office for both ministers. My expectation—and it is only my expectation—is that the focal point for Northern Ireland would be in the Office of the First Minister and Deputy First Minister and they would no doubt have a relationship with the Equality Commission for Northern Ireland.

**Q93 Lord Morris of Handsworth:** And locally?

**Mr Timm:** And locally as well.

**Q94 Chairman:** We have spent a lot of time on reservations and I think quite rightly. Forty one countries have ratified. Only four have entered reservations, El Salvador to say that the Convention should be consistent with their constitution, Malta on electoral law, Mauritius on risk and humanitarian emergencies and Poland on abortion. The UK has entered potentially four on its own account, on defence, which we talked about earlier, and I seem to recall that Douglas Bader was a rather good pilot in the Second World War with his disability, education, immigration and benefits. None of our other European partners has got particular worries about these sorts of things. Is there a systematic problem here, that we have signed the thing but there does not seem to be anybody taking leadership of challenging those departments who have come forward and said, “We want this reservation. We want that reservation”, there is no involvement with the NGOs in questioning those departments, there does not seem to be much challenge coming from within the ODI to those departments’ positions? Is there somebody who should be taking leadership, perhaps involving the Human Rights Commission at MoJ in trying to question these reservations, saying are they really necessary, because the work we have done seems to suggest that most of these things do not amount to a tin of beans and it is really over-egging the pudding, particularly when we look at what all the other countries involved in ratifying the Convention are doing? Nobody else has got these problems. Why is it only the UK that has got a problem about the front line in the Army and all the other things? Is anybody taking the lead in questioning these positions being put forward, challenging them and saying, “Is this right, is this feasible?”, because we say it is not because of X, Y and Z?

**Jonathan Shaw:** You heard my colleague’s advice, Chairman, that it was not just our country in relation to the Army. That is something that I think the Commission have come up with.

**Q95 Chairman:** Yes, but the Commission’s position is a permissive thing primarily to accommodate the UK; it is not a mandatory thing.

**Jonathan Shaw:** The position of the MoD in this country has been clear since they were exempted from the DDA, so I do not think that comes as any surprise. As I say, there have been discussions across government and we have made considerable progress, and I refer to Anne McGuire’s letter of May setting out some of the areas where we might be concerned. It is for us to justify ourselves, and obviously it is not appropriate for me to scrutinise other governments and how they have sought to compare the Convention and how it fits with their legislation. It is just for me to talk about this Government in the United Kingdom, and I say to you that we take it extremely seriously, and if there are areas that do not fit and we try and try but it does



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not fit then we feel it is right to enter a reservation. That is the way we have done business. Can I give you an example, Chairman?

**Q96 Chairman:** Can we do something on a comparative basis by way of countries? Do we have a monopoly of wisdom compared to other countries?

**Jonathan Shaw:** No, we do not have a monopoly of wisdom and, as I say, it would not be appropriate for a UK government minister to make comparisons as to how different countries have ratified. What I can say is that we take this seriously and we can only be judged, I think, on how we have done that. The example that I wanted to give you was where DWP are going to enter a reservation—not welcome, but it is right that we do—on benefit appointees and powers of attorney. We do not have currently a reviewing system for that and so we are obviously going to have to consider how we might do that at some point in the future, so we are not going to ignore that. We are going to be up front about that in order that Parliament can properly scrutinise that

and so that they can understand what we are saying we are doing. As I say, looking across the Convention at all of the different articles, I can point to areas of domestic law where we have made considerable advancement, not least of all giving the DDA 1995 what it wanted in giving it proper teeth that it did not have when it was first passed in these Houses. It is not that we have got all of the knowledge. It is that we do this in our way.

**Chairman:** Thank you very much. We have come to the end of the session. I think you get the impression from the Committee that we regard this Convention as extremely important. I know the Government shares our view that it has given a huge amount of benefit to disabled people in the country. Our frustrations are that we potentially are having a slippage in time. We are not involving people as they should be in some of the difficulties that they have identified and the consequences of those, so we may end up with something that is not as good as it potentially could be, but that is not to detract from the very important benefit that this Convention will bring as and when the Convention is ratified in the UK. Thank you.

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# Written evidence

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## Memorandum submitted by the London Autistic Rights Movement

Submission to the Joint Human Rights Committee. On The UN Treaty on the Rights of Persons with Disabilities and the Optional Protocol must be ratified in full.

But the specific provisions in the Treaty to cover some types of disabled people (eg the deaf sign community) do not meet in full the needs of all disabled people. Most notably those not resourced, despite pleas to the contrary, to be there, such as neurodiverse people (people with uneven neurological profiles whatever the cause, ranging from brain injury to mental health survivors to autism, tourette's, parkinson's, dyspraxia and dyslexia). The UN was prepared to ensure that poor countries were represented, but was deliberately deaf (pun intended) to demands from those at the wrong end of the hierarchy of impairments in the developed world.

Thus there is no specific provision in this Treaty to cover even scotopic sensitivity by ensuring that there is an explicit right to have documentation on the paper colour of one's choice. Even though 95% of the population finds something other than black type on white paper easier to read.

Nor are there explicit provisions to create an individually controlled environment and to combat sensory overload (noises and colours too bright), food intolerance, etc.

The task now is to goldplate this treaty on the basis of best practice (including creating a globally fully inclusive, democratic and fully representative Disabled People's Movement, not merely geographically but also on the basis of type of disability). This also includes, as Disability Awareness in Action (DAA) has pointed out, and LARM submitted as part of our response to the Department for Work and Pensions (DWP), Office for Disability Issues (ODI), consultation on Independent Living, the direct election of members of disabled representatives at all levels of Government with full powers, as has been done in Uganda in the past, but ensuring that they are fully representative. LARM's submissions over this and Welfare Reform build on top of and incorporate the Disability Rights Commission (DRC)'s Neurodiversity & Autism Action Group Reports which include the Disabled People's Charter of Needs. This expands the Southampton Centre for Independent Living (SCIL)'s requirements for Independent Living to include such rights as to have a person's social interaction style supported, coaching and counselling rights, food and dietary rights, the right to an individually controlled environment (ICE) (including all forms of sensory input and output (noise, light, heating, smell, taste and texture); flexiplan (including cellular spaces and the right not to be in an open plan environment).

*Adrian Whyatt*, Steering Group Member, London Autistic Rights Movement (LARM)

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## Memorandum submitted by the United Nations Convention Campaign Coalition

I am writing to you on behalf of the UNCCC following your meeting on 18 November. We had 10 member organisations observing at the Committee. We were heartened by the strong support given by your committee for consulting disabled people and their representative organisations; and your effective questioning of the Minister for Disabled People around the excessive secrecy; the strong support given to the urgent need to ratify without reservation the UN Convention on the Rights of People with Disabilities. We would like to make the following points.

*Equality 2025* was mentioned several times by the Minister to demonstrate that the Government is consulting disabled peoples organisations on the Convention. Equality 2025 is a group of individuals appointed by the Government to advise them on disabled issues and to act as a conduit. They are not a representative organisation. Equality 2025 has had to struggle quite hard to be allowed to provide any advice on this issue. The Government has only held one meeting with representative disabled peoples organisations since adoption on 30 March 2007. This was on 4 December 2007 and despite numerous requests for further meetings none has been called. In its Statement on the Purpose of Equality 2025 para. 2.2 it says "The network will not replace any existing government consultation mechanisms nor be used by government instead of consultation".

*Transparency.* Our 27 disability organisations share your Committee's concerns about lack of transparency on this issue and urge you to publish a report of your deliberations And the evidence you have received to inform other members of Parliament. This will also aid the Government to become more accountable in the procedures they are using to ratify this Treaty. As we understand it the Minister only has to lay his proposal before Parliament for 21 days. Therefore we fully endorse your call for draft proposals to be published by the Minister before this occurs.

*Dependent Territories.* We believe that the Convention should be ratified for UK Overseas Dependent Territories and Crown Dependencies as well. It is not clear why this is not being pursued by the Government.

*Reservations.* We were pleased to hear that reservations on independent living and sign language interpretation appear to have been dropped. However, as we have no substantive wording or reasoning for this withdrawal, neither we nor your Committee have any way of knowing if this may come back into the frame at a later date.

UNCCC was concerned to hear that new reservations had emerged since Ann McGuire's letter to you of 24 September.

*Benefits and guardianship.* We are concerned that the DWP are raising objections which could be accommodated within the existing safeguarding system on appointees which still has to be reviewed by a supervisor in DWP. Article 12(4) is clear that it does not require disproportionate measures as safeguards. The DWP should surely change its procedures to accommodate the need for a proportionate independent review in accordance with Article 12.4 rather than raising a reservation.

*Article 18 Immigration and Public Health.* We agree with members of your committee the Government already has powers to quarantine people and planes etc if there is evidence of infectious disease. And this would be allowed under the terms of the Convention as a non-arbitrary deprivation of mobility or nationality.

We have serious concerns that this reservation may be a smoke screen for reject disabled asylum seekers and immigrants because they have an impairment. Jacqui Smith told your Committee on 27 October as Home Secretary that she knew of no plans for a reservation. Where has this suggestion come from?

*Ministry of Defence.* The exemption from the DDA is out of date and out of step with Equality and Human Rights. The MoD has said it only wants this reservation on recruitment, yet the Minister said the main reason was for tactical deployment. There is no need for this reservation. There are already grounds for occupational categories and competencies in the DDA. We were told that the European Commission had also got this reservation as an option. What the Minister neglected to tell you was it was British Government representatives who insisted on this-as we are reliably informed by the European Disability Forum. Incidentally the British Dyslexia Association found that 60% of Special Forces were dyslexic and had to provide the MOD with advice on reasonable adjustments.

*Education Article 24.* We still see no need for the reservation/ interpretive declaration the Government are suggesting. The progressive realisation clause which will allow for the range of provision under the current state system to slowly evolve inclusive capacity. We cannot however accept that separate special schools can be seen as inclusive provision. This makes the concept of inclusive education meaningless.

We were particularly concerned to hear that the Minister said that one of the reasons for including special schools was to meet the needs of certain disabled children. The Government in the 2001 SEN Disability Act specifically got rid of this as a reason to send children to special schools against parental wishes. The other argument seemed to be about parental choice. We do not believe that human rights can be limited on the basis of parental choice. The state has to provide a quality education not a choice. This concept also contradicts the principles of the Convention and the contents of Article 7 which gives increasing weight to the views of the child with their evolving capacity.

We are not convinced that the Devolved Administrations are in agreement with the proposed reservation to Article 24. In particular, we greatly doubt that the Minister for Education in Northern Ireland concurs with any proposed reservation/ interpretive declaration to a UN Human Rights Treaty.

*Optional Protocol.* We agree that individuals should have the right to go to the Committee if they have exhausted judicial procedures. It cannot support the development of Human Rights if people in the UK have this right in areas of European Competency and not in others.

Lastly we share your amazement that 41 Countries have ratified with four reservations and the UK on their own are contemplating four reservations. We would want to point out that other signatories of the Treaty are very likely to challenge the UK Government if they go ahead on this basis.

The position of the Campaign remains that the Convention should be ratified without reservations, including reservations disguised as interpretive declarations.

*Richard Rieser*

Chair of the United Nations Convention Campaign Coalition

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#### **Memorandum submitted by the Department of Work and Pensions**

I appeared before your Committee, with my officials, on 18 November and gave evidence as part of the above inquiry. I attach a corrected copy of the transcript for your Clerk's consideration.

In respect of the position of the Home Office, that Department has indicated that there may be a need to enter one or more reservations or declarations, which as I understand it and have indicated to the Committee, are founded largely on public health considerations. The possible reservations or declarations are in respect of immigrations and citizenship, with particular but not necessarily exclusive focus on article 18 of the Convention. My officials are continuing to explore with the Home Office the scope and basis for these, and I will write to you further on this point.

My officials have also made Home Office officials aware of Dr Harris's concerns regarding the potential implications for disabled people of making voluntary work a requirement for citizenship.

A copy of this letter goes to the Committee Clerk.

*Jonathan Shaw*

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### **Letter from the Chair to Anne McGuire MP, Minister for Disabled People**

#### UN DISABILITY RIGHTS CONVENTION: PROGRESS TO RATIFICATION

The UN Convention on the Rights of Persons with Disabilities (“the UN Disability Rights Convention”) came into force on 3 May 2008. The Optional Protocol entered into force on the same day as the Convention. The Government was closely involved in the negotiation and agreement of this Convention and was one of its first signatories. The monitoring body for the Convention, the Committee on the Rights of Persons with Disabilities will be elected after the first meeting of the Conference of State Parties (which must take place no later than November 2008). Only States which have ratified the Convention may participate in the formation of this monitoring body, including by proposing or electing Committee members.

We welcome the Government’s continued commitment to ratification by December 2008. However, in light of the number of possible reservations or interpretative declarations which you have indicated are being considered, we are concerned that this timetable now appears unrealistic.

In order to support our work in the next session and to increase the transparency of the ratification process, I would be grateful if you could provide us with some further information on the current stage of the Government’s work towards ratification.

#### RESERVATIONS AND DECLARATIONS

In your response to our report, *A Life like any Other?: Human Rights of Adults with Learning Disabilities*, you explained that “one or more” reservations to the Convention were being sought by the Ministry of Defence, the Department for Children, Schools and Families and the Home Office. You also told us:

There are also a number of areas where we are continuing to explore whether there are any compatibility issues which may result in the need for an interpretative declaration or reservation. There are measures relating to the exercise of legal capacity; aspects of mental health legislation; choice of place of residence and cultural services (interpretative measures).<sup>1</sup>

Responding to a recent question in the House of Lords, Lord McKenzie of Luton explained: “Other departments have identified areas where the position is not yet clear but progress continues to be made”.<sup>2</sup>

1. We would be grateful if you could outline each of the (a) reservations and (b) interpretative declarations currently being considered by the Government and the reasons for them.
2. We would also be grateful if you could explain how each reservation is considered compatible with the object and purpose of the Convention (as required by the Vienna Convention on the Law of Treaties).
3. If the position in relation to any of the reservations or interpretative declarations outlined earlier in the year has changed, we would be grateful if you could explain the nature of the change and the reasons for it.

#### WORKING WITH THE EUROPEAN COMMUNITY

On a number of occasions, you have explained that this is the first time that the EC has itself become a signatory to an international human rights treaty and that careful coordination would be necessary before ratification. In May, you explained that this would affect the timetable for ratification by the UK:

Given the duty on Member States to cooperate with the Community the UK would wish to take into account the European Commission’s proposals for Community Conclusion of the Convention, which is still awaited.<sup>3</sup>

Twenty-six EU Member States have signed the Convention and 16 have signed the Optional Protocol. Hungary, Spain and Slovenia have already ratified both the Convention and the Optional Protocol. The European Commission has explained:

Given the strong convergence of objectives between the overall EU Disability Strategy and the UN Convention, the Commission considers that issues relating to implementation of the UN Convention at EU level should be tackled in the framework of the rolling EU Action Plan on mainstreaming of disability.<sup>4</sup>

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<sup>1</sup> Cm 7378, Page 4

<sup>2</sup> HC Deb, 9 July 2008, Col 748

<sup>3</sup> Cm 7378, Page 4

<sup>4</sup> <http://ec.europa.eu/social/main.jsp?catId=431&langId=en> (Last accessed 23 July 2008)

The Commission is currently considering its proposals for the Council Decision necessary for conclusion of the Convention by the Community.<sup>5</sup>

4. I would be grateful if you could provide further information on how the UK Government has coordinated with the European Community on its preparations for ratification of the UN Disability Rights Convention. In particular:
  - (a) Please provide us with any documents relevant to the “European Commission’s proposals for Community Conclusion of the Convention”, including any draft Decision, as soon as they become available.
  - (b) Does the Government consider that there are any barriers in areas of EC competence to either (a) ratification by the UK in December 2008 or (b) any proposed reservations or interpretative declarations being considered by the Government?
  - (c) If so, please tell us what these barriers are and how they will affect the Government’s preparation for ratification of the Convention.

#### BARRIERS TO RATIFICATION: SCOPE OF THE DDA

We welcome the Government’s view that the UK should not ratify any international treaty until it is in a position to ensure that it can implement the provisions of that Convention and comply with its obligations.<sup>6</sup> You told us:

Ratification will be in respect of the United Kingdom of Great Britain and Northern Ireland. Part of this process has required the Devolved Administrations and Government Departments to check their legislation policies, practices and procedures against the Convention’s provisions. This has inevitably taken some time. However, this phase of the work is now over and we are considering carefully the emerging findings.<sup>7</sup>

5. Please explain whether the Government has identified any barriers, or potential barriers, to ratification in the domestic legal systems and administrative practices of the United Kingdom, including in respect of the Devolved Administrations.
6. Does the Government intend to publish the outcome of its internal review of the compatibility of domestic legislation and administrative practice with the UN Disability Rights Convention?
7. If so, we would be grateful to receive a copy as soon as the review is complete. If not, we would be grateful if you could provide a detailed summary of the responses received from each Government department and each of the Devolved Administrations in your response to this letter.

In June 2008, the House of Lords significantly narrowed the protection from discrimination on the grounds of disability offered by the Disability Discrimination Act 1995 (DDA). Under previous case law, if, for example, an employee were away from work for a long time because of his disability, the way that he was treated by his employer should not be compared to someone who was also away but for reasons not related to disability.<sup>8</sup> In *Malcolm*, a majority House of Lords reversed this position.<sup>9</sup>

As one of our members, Lord Lester of Herne Hill QC recently explained in the House of Lords, under our current interpretation of the DDA, this means:

A person who is blind, or visually impaired, with a dog will not be able to claim disability discrimination if a restaurant has a “no dogs” policy and applies the policy regardless of disability”.<sup>10</sup>

Now, disability must play a “motivating part” in a decision to treat a person less favourably. It will not be enough that a rule or practice is applied to everyone but has an indirect discriminatory effect on people with disabilities.<sup>11</sup> In a minority judgment, Baroness Hale explained why she thought this approach unsatisfactory:

The object of the earlier race and sex discrimination legislation was to secure that like cases were treated alike regardless of race or sex. [. . .] But this might not be enough. The race and sex discrimination legislation recognise both direct discrimination of that sort, when race or sex or disability is the reason why the landlord behaves as he does, and indirect discrimination, where the landlord imposes some requirement which is ostensibly neutral but has a disproportionate effect on one sex or on race and which cannot be justified. The DDA undoubtedly aimed to cover this discrimination too. The White Paper, *Ending Discrimination against disabled people*, [. . .] made it clear [. . .].<sup>12</sup>

<sup>5</sup> First Disability High Level Group Report on Implementation of the UN Convention on the Rights of Persons with Disabilities, European Commission, Prepared for Ministerial Meeting, 22 May 2008. [http://ec.europa.eu/employment\\_social/index/7003\\_en.html](http://ec.europa.eu/employment_social/index/7003_en.html) (Last accessed 28 August 2008)

<sup>6</sup> Cm 7378, Page 4. See also HL Deb, 9 July 2008, Col 748

<sup>7</sup> Cm 7378, Page 5.

<sup>8</sup> *Clark v Novacold Ltd* [1999] ICR 951

<sup>9</sup> *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* [2008] UKHL 43

<sup>10</sup> HL Deb, 9 July 2008, Col 749

<sup>11</sup> *Ibid*, paragraph 40

<sup>12</sup> *Ibid*, paragraphs 70–81

The DDA has been amended, in relation to employment, to make it clear that indirect discrimination can be challenged (see Section 3A(5), DDA (as amended)). However, the scope of protection offered against discrimination on the grounds of disability in respect of the provision of goods and services, including access to community facilities and housing, appears to have been significantly narrowed. The UN Convention on Disability Rights requires:

States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.
- (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise. (Article 4)

States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided. (Article 5)

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. (Article 9)

The Government has explained that it is currently considering the House of Lords judgment in this case, but that it does not consider that the decision will affect the ability of the UK to ratify the Convention.

8. We would be grateful if you could provide reasons for the Government's view that the House of Lords judgment in *Malcolm* does not have implications for ratification of the UN Disability Rights Convention.
9. In particular, we would be grateful if you could explain the Government's view that the protection of the DDA, as interpreted by the majority in that case, is compatible with the obligations under the Convention to eliminate discrimination against people with disabilities, including through making reasonable accommodation for those disabilities (Articles 4–5) and the obligation to enable and facilitate equal and independent access to the community for people with disabilities (Articles 9, 19).
10. Does the Government consider that this case significantly narrows the application of the DDA, when compared to the original intention of Parliament, in cases involving discrimination in respect of housing, goods and services? (If not, please explain the Government's view.)
11. If so, does the Government plan to use the forthcoming Equality Bill to restore the original intention of Parliament?

#### OPTIONAL PROTOCOL

On each occasion when we have asked the Government to explain its position on ratification of the Optional Protocol to the UN Disability Rights Convention, the Government has explained that the Ministry of Justice is conducting a review of the ratification of the Optional Protocol to UNCEDAW. The publication of the outcome of this review has been delayed for almost two years. We have written under separate cover to the Minister for Human Rights to ask when this review will be complete.

12. We would be grateful if you could explain whether the Office for Disability Issues has identified:
  - (a) any barriers to ratification of the Optional Protocol to the UN Disability Rights Convention; and
  - (b) any benefits for people with disabilities in the United Kingdom which would result from ratification of the Optional Protocol.
13. In the light of the Government's commitment to the negotiation of this Convention, and to early ratification, does the Government agree that there would be benefits in early UK involvement in the shaping of its monitoring processes, including through the development of the work of the Committee on the Rights of Persons with Disabilities under the Optional Protocol?

## TIMETABLE

I understand that the Government aims to have an Explanatory Memorandum on the Convention ready before the end of the current parliamentary session. We would be grateful to receive a copy of that Memorandum as soon as it is available.

14. Please provide us with the current Government timetable for progress towards ratification.

28 August 2008

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**Letter to the Chair from Anne McGuire MP, Minister of Disabled People**

Thank you for your letter of 28 August in respect of the UN Convention on the Rights of Persons with Disabilities.

I am grateful for the support you have expressed for ratification of the Convention. You will be aware that the Government remains very much committed to this aim.

As my Statement of 6 May demonstrated, the process involved in ratification is both a very complex and a very challenging one. It is my intention to make a further announcement on progress after Parliament has resumed in October. We are still considering the implications of the work that needs to be done and I will indicate my expectations for the timetable then. In the light of the position that I hope will then have been reached in respect of some of the key issues that you have identified but which are still currently outstanding—including the reservations/interpretative declaration package; the Optional Protocol and the European Commission's proposals for Community Conclusion—I will write to you again with a more detailed response to the questions that you have raised.

## RESERVATIONS AND INTERPRETATIVE DECLARATIONS

My statement did, as you suggest, identify a number of areas where reservations or interpretative declarations had been under consideration, and following further discussions the positions of the Ministry of Defence, Home Office and the Department for Children, Schools and Families have been confirmed.

The Ministry of Defence will wish to have a reservation in respect of service in the armed forces, consistent with the provisions of the Disability Discrimination Act 1995 (as amended) and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Convention Article 27 and others).

The Department for Children, Schools and Families will wish to have an interpretative declaration to recognise that the general education system in the UK includes a range of provision, including mainstream and special schools (Convention Article 24(2)(a)). The Department for Children, Schools and Families also want a reservation to ensure that those disabled children whose educational needs are best met through specialist provision which may be some way from their home can continue to receive it (Convention Article 24(2)(b)).

The Home Office will wish to have a reservation in respect of Convention Article 18.1 and an interpretative declaration in respect of 18.2. These concern immigration and nationality. The UK has a comprehensive set of rules and procedures for governing entry and stay in the UK and for the acquisition of citizenship. These are kept under frequent review and are changed from time to time as needed to ensure, for example, integrity of UK borders. The Government believes that the UK must retain such flexibility (and made a reservation to this effect when ratifying the Convention on the Rights of the Child). The reservation and interpretative declaration are intended to ensure that this flexibility is retained, and will make clear that the Convention does not give disabled people additional rights in respect of liberty of movement, freedom to choose their residence and nationality.

My Statement referred to a number of other Departments which had identified areas where it was not clear whether or not reservations or interpretative declarations would be necessary. Detailed discussions about these areas have continued. I am pleased to be able to report that possible compatibility issues in respect of choice of residence and aspects of mental health legislation have been resolved and reservations and interpretative declarations will not be required. Discussions are continuing concerning of Article 12.4 in respect of measures relating to the exercise of legal capacity and Article 30(4) in respect of cultural services (interpretative measures).

Any package of reservations and/or interpretative declarations will, of course, need to be agreed across Government before it is possible to lay the necessary Explanatory Memorandum for ratification.

The final package of reservations and interpretative declarations will, in effect, constitute the published outcome of the review of the compatibility of domestic legislation, policies, practices and procedures which has been undertaken. Individual Departments and the Devolved Administrations have been responsible for deciding upon their own positions. However, the Office for Disability Issues has co-ordinated this, and has stressed the need for Departments and the Devolved Administrations to have careful regard to the need for

any reservations and interpretative declarations to be compatible with the object and purpose of the Convention. I will write to you with details of the rationale behind the reservations/interpretative declarations that it is proposed that the UK should enter when the final package is announced.

#### WORKING WITH THE EUROPEAN COMMUNITY

As you will be aware, the European Commission's proposals for Conclusion (ie ratification) of the Convention and the Optional Protocol have been long awaited and through colleagues in the Foreign and Commonwealth Office and directly we have sought to engage with the Commission both as to the timing of the proposals and arrangements for its consideration by Member States post-publication. These have yet to be formally published, although we anticipate that this will happen shortly and I will ensure that copies are sent to you.

The indications are that the legal basis for Conclusion and the competence (both shared and exclusive) claimed by the European Commission will require very careful and detailed scrutiny across Government, as will the overlap of Member State and EU monitoring and reporting processes, and the position in respect of the Optional Protocol. The Government will need to consider the implications of the Commission's proposals for UK ratification, and in particular, will want to consider whether the Commission's competence claims have any specific implications for the package of any domestic reservations and interpretative declarations.

#### MALCOLM AND THE DISABILITY DISCRIMINATION ACT

We do not underestimate the significance of the House of Lords decision in *Malcolm* in overturning previously established case law on disability related less favourable treatment. We are actively considering whether, and if so what, legislative change might be needed. We are not yet in a position to make any proposals, though we would expect to consult on any proposals prior to their inclusion in the Equality Bill.

In the meantime, the Government is fully aware of the obligations imposed in particular by articles 5.2 and 5.3 of the Convention, which you quote in your letter. Our view is that our legal framework against disability discrimination remains robust, despite the *Malcolm* decision. In particular, the judgement (which is based on facts which predate the coming into force of the Disability Discrimination Act 2005) does not affect the duty to make reasonable adjustments for disabled people which the Disability Discrimination Act places on, inter alia, service providers, employers and controllers of premises.

Furthermore, we are planning to improve and simplify protection against discrimination for disabled people through the Equality Bill, for example by the introduction of direct discrimination into areas beyond employment and adopting a more consistent approach to the threshold at which the duty to make reasonable adjustments arises.

#### OPTIONAL PROTOCOL

As the Committee knows, the UK does not generally accede to rights of individual communication/petition in international human rights treaties, whether expressed as Optional Protocols or in other ways. Traditionally the UK has seen little practical benefit in such mechanisms in advancing the human rights of people within UK jurisdiction. Decisions of the relevant UN Committee are not legally binding and are not, therefore, equivalent to judicial decisions.

The Government is, therefore, considering the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities against this backdrop and in the light of the review being conducted by the Ministry of Justice into the accession to the similar Protocol to the Convention on the Elimination of all forms of Discrimination against Women. That Review is drawing to a conclusion and I hope that the Government will be able to make a decision about the disability Optional Protocol soon.

I should emphasise that if the Government does not accede to the Protocol this should not be taken to imply that our commitment to human rights for disabled people is somehow reduced. We must still abide by the provisions of the Convention when we have ratified it and we must publicly demonstrate that we have done so through the reporting and monitoring system set up under the Convention.

#### MONITORING COMMITTEE

As the Committee is aware, the Convention provides for the establishment of a UN Committee on the Rights of Persons with Disabilities—a body of independent experts tasked with reviewing States' implementation of the Convention. These experts will be nominated by States Parties to the Convention and are elected by a Conference of States Parties. The UK will be able to participate in the election process after we have ratified the Convention.



The Committee should be established within six months of the Convention coming into force and I understand that the first Conference of States' Parties, at which the election of Committee members by States which have ratified the Convention will happen, is now scheduled to take place in New York on 3 November.

The Convention also provides for the Committee to be expanded from 12 to 18 members when (in addition to the 20 ratifications that were needed for the Convention to come into force) a further 60 states ratify. As at 15 September, 37 countries had ratified the Convention.

#### OTHER ISSUES

You have asked about potential barriers to ratification, and will wish to be aware of two further issues.

First, we are considering the need for specification of the Convention under Section 1 (3) of the European Communities Act 1972. We will be consulting on the need and implications of this with other Government Departments. If required, specification will be by an Order in Council, approved in draft by a resolution of each House.

Second, Article 33 of the Convention requires that "States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention". We have agreed with the Equality and Human Rights Commission, the Scottish Human Rights Commission, the Northern Ireland Equality Commission and the Northern Ireland Human Rights Commission that they will be part of this framework. In the case of Scotland, this has required the Scottish Executive to lay an Order before the Scottish Parliament to specify the Convention for the purposes of section 9 of the Scottish Commission on Human Rights Act 2006.

This will allow the Scottish Human Rights Commission to conduct inquiries into the policies and practices of public authorities and institutions where the subject matter of the inquiry is about whether the human rights contained in the Convention are being respected. The draft Order will be considered by the Scottish Parliament's Subordinate Legislation Committee and then the Justice Committee before it is laid before the full Scottish Parliament for approval, after which it would go to the Privy Council.

#### CONCLUSION

I very much welcome the Committee's continued interest in this Convention and look forward to working with you constructively towards ratification. The Government's stated aim is that "By 2025, disabled people in Britain should have full opportunities and choices to improve their quality of life, and will be respected and included as equal members of society" (Life Chances Report—Prime Minister's Strategy Unit 2005). Ensuring that disabled people can enjoy their human rights on an equal basis with non-disabled people is an essential part of achieving that vision.

*2A September 2008*

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#### **Memorandum submitted by Janet Burton**

I understand you have invited comment on the following issues for the ratification of the UN Convention on the Rights of Disabled People:

1. Timetable for ratification;
2. Proposals for reservations and interpretative declarations;
3. Ratification of the UN Convention by the European Community;
4. Compatibility of existing UK laws and practices with the UN Convention;
5. Ratification of the Optional Protocol and the right to individual petition.

1. I would urge on the first point that the UK ratify the convention as soon as possible. As I understand it, the Convention puts disability firmly as a Human Rights issue. The existing core human rights treaties do not adequately address the physical, social, cultural, economic and legal barriers to inclusion of, and participation by, people with disabilities in all aspects of life. However, the Convention does not provide that they have more rights; just that the barriers to inclusion are addressed in order they can access their rights. It is absurd to hold back from agreeing that disabled people have the same human rights as everyone else; any attempt to do so breaks the Human Rights Conventions already ratified. This Convention empowers disabled people to access their Human Rights, which by ratifying the Convention on Human Rights this country is already agreed that they have.

2. I believe that some Government departments are urging reservations or special interpretations. Please do not permit these to be incorporated into our ratification of the convention.

My issue is that as soon as we grant one exemption or reservation to someone's Human Rights, we are creating a dual society, where some have more or different rights to others.

I know that there may be some incompatibility between the terms of the Convention and the way some organisations operate, just as there are differences between our own Disability Discrimination Act (DDA) and the way organisations operate at present. Ten years after the DDA was made law, discrimination is still rife in our communities, from public authorities, transport companies, housing associations—everywhere. Despite the DDA, we have some inaccessible public buildings, inaccessible public transport, and inaccessible social housing—just ask disabled people.

But it is the principle which is vitally important—it is a discrimination-free UK we are working for—and we want the Convention ratified to set that principle in stone, without any “maybe” or “perhaps” such as reservations or exemptions would provide.

3. The European Community equally should ratify this Convention; indeed some members of it already have ratified it individually, and anything less than full ratification makes a mockery of the EU and its standing as a World force.

4. I have already said that I recognise there is disparity between current practice and our current legislation. I do not believe there is any disparity between the purpose of our current legislation and the UN Convention; both are intended to ensure disabled people both have, and can access, the same rights and protections as everyone else.

I very strongly believe that just because current practices differ from both our own legislation and that of the Convention, there is no reason to limit ratification of the Convention.

For example, I believe that everyone has the right to travel freely on public transport in this country; just because some people have to call ahead and get special “approval” to travel (eg check that wheelchair space and support is available where necessary) does not mean that they do not have that right to travel freely too. It is a sign that the travel company has a long way to go to improve its facilities; not that the law should be amended so that that group of people have different rights.

5. The optional protocol is essential if there is any point to ratifying the Convention. Without it, the organisations in this country who are still not meeting the DDA and similar legislation will have carte blanche to ignore the UN Convention too. We must support the right of the individual to obtain justice, and therefore their right to take their case to the highest court we recognise.

I know as an individual my case will not hold as much weight with the Committee as representatives from organisations and Government Departments, but please consider the Human Rights of the people it most concerns. The Convention on the Rights of Disabled People deserves to be ratified completely, not amended to meet the requirements of business or Government; just as the Convention on Human Rights was ratified without amendment.

People with disabilities are human too; give them full access to their human rights by ensuring the UN Convention on the Rights of Disabled People is fully ratified.

October 2008

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#### **Memorandum submitted by the Centre for Studies on Inclusive Education**

*The Centre for Studies on Inclusive Education (CSIE) is an independent centre, set up in 1982, actively supporting inclusive education as a human right of every child. We are funded by donations from charitable trusts and foundations, with additional income from sale of publications and small grants for research or other projects. Our work is driven by a commitment to overcome barriers to learning and participation for all children and young people. Our activities include lobbying and campaigning, research, training, consultancy and dissemination of information. We can be reached at [www.csie.org.uk](http://www.csie.org.uk).*

In our submission we would like to draw your attention particularly to the DCSF’s proposal to reserve or make an interpretive declaration on Article 24 of the Convention. Out of all the government’s doubts about ratification, this seems to be the one where the line has been most firmly and clearly drawn.

We would ask you to consider whether this does not constitute a resistance to the very principle of the Convention. Government policy documents and programmes pertaining to disabled adults now routinely mention the basic human right to inclusion in mainstream life and institutions (for example *Improving the Life Chances of Disabled People*; *Valuing People*). Policy documents and programmes pertaining to disabled children also talk about the right to inclusion in mainstream life and institutions—except that this seems to exclude schools (as if children spent the majority of their waking lives in some other kind of institution than a school). *Improving the Life Chances of Disabled Children*, for example, talks about inclusion before school and after school—but not in school. *Aiming High for Disabled Children* talks about the right to inclusion in mainstream institutions, but states that this does not cover schools.

Can governments make an exception of children? The UK government clearly considers children to possess basic human rights, since it signed the UN Convention on the Rights of the Child. It clearly considers disabled people to possess basic human rights, since it was the main initiator of the Convention on the Rights of Disabled People. In the latter case, then, the question we would ask you to consider is: How can “people”

exclude “child”? Indeed, the UN’s response to the UK government’s report on its progress with the Convention on the Rights of the Child criticised it precisely for failing “to develop a comprehensive national strategy for the inclusion of children with disability in the society” (53d).

In its resistance to ratifying Article 24 without reservation or interpretive declaration, the DCSF is essentially drawing the ox-wagons around the existing system of segregated (“special”) schools. CSIE has no doubt that this goes against what senior civil servants and Ofsted inspectors with a knowledge of the issues privately consider to be both the moral and the educational case in favour of inclusion. However, they also to regard the segregated sector as too big and too entrenched an interest for them to be able to shift.

Governments can protect this sector’s interests, or they can protect the well-being and future life-chances of disabled children. They cannot do both. By denying children with disabilities and other difficulties access to friendships and social relationships with their non-disabled peers, segregation damages them and the opportunity for the full adult life which other departments acknowledge as their right; equally, it damages the staff who work in them. Segregated institutions are by their very nature abusive to all who are in them, as we ought to have learned from the history of long-stay institutions for disabled adults, now thankfully closed. When will we apply that lesson to children?

It should not be necessary to add that some children with every type and every level of severity of disability are being educated at this moment in some mainstream schools somewhere in the country (see the DCSF *Statistical Bulletin* 15/2008, Table 9). We know, in other words, that inclusion works. Despite what any of us may have been told, doing inclusion is not difficult—the difficult thing is wanting it. The government cannot reserve on Article 24 without saying that they do not want it. And not to want it is clearly to contravene the principle of the Convention.

20 October 2008

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#### Further submission from the Centre for Studies on Inclusive Education (CSIE)

The Centre for Studies on Inclusive Education (CSIE) has already entered a submission to the Joint Committee on Human Rights for your meeting with the Minister for Disabled People on Tuesday 18 November concerning ratification of the United Nations Convention on the Rights of Disabled Persons.

We believe the following questions to be essential concerning the DCSF’s intention to issue interpretive declarations or reservations on Article 24 in respect of disabled children’s inclusion in mainstream schools, and would ask for your support in this matter.

*Question 1. Policies of other government departments and indeed cross-governmental policies concerning disabled adults (e.g Improving the Life Chances of Disabled People; Valuing People; Getting a Life) all insist explicitly on the right of “inclusion” for disabled people in mainstream life and institutions. Does the Minister not think that the inclusion of disabled children (the disabled adults of the future) in local mainstream schools will make their inclusion in adulthood easier to achieve?*

*Question 2. Setting the Convention on the Rights of Disabled Persons alongside UN criticism of the UK for failing “to develop a comprehensive national strategy for the inclusion of children with disability in the society” (53d of the UN’s recommendations, 3 October 2008), does the Minister not think that children come under the heading of “persons” and schools under that of “the society”?*

17 November 2008

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#### Memorandum submitted by the European Network of (ex) Users and Survivors of Psychiatry [ENUSP]<sup>13</sup>

ENUSP welcomes the Joint Committee’s review of the UK’s progress toward ratification and implementation of the UN Convention on the Rights of Persons with Disabilities.

This paper seeks to clarify our priorities and concerns in relation to the equal enjoyment of human rights for our constituency remains at significant risk. Our aim, in the remainder of this brief paper, is to outline our justification for this claim.

1. We believe that the report of *Manfred Nowak*, Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment<sup>14</sup> published in July 2008 is particularly relevant. Mr Nowak’s Report emphasises that human rights law and conventions have traditionally failed to address special concerns of people with disabilities or the subgroup with mental “disabilities” or mental “illnesses”.

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<sup>13</sup> www.enusp.org

<sup>14</sup> UN General Assembly 28.08.08, 63rd Session, Item 67(a)

2. Some instruments have addressed the specific provisions needed to address the rights of groups likely to be vulnerable to discrimination and abuse; for example, the 1993 *Vienna Declaration*<sup>15</sup>, affirmed that people with mental and physical disabilities are entitled to the full protection of international human rights instruments, and that governments must establish domestic legislation rights and fundamental freedoms are universal and this unreservedly include people with disabilities.
3. The *United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*<sup>16</sup> is an international human rights instrument intended to prevent torture and other similar activities and, as the Nowak report, referred to above, makes abundantly clear, is entirely relevant to disabled people.
4. Article 3 of the *European Convention on Human Rights* contends that: “No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment”. ENUSP—in common with other regional organisations of (ex) Users and Survivors of Psychiatry—contend that coercive psychiatric interventions must be classified under this heading.
5. Manfred Nowak’s report in July 08 to the UN General Assembly includes these comments which apply to people with mental health problems—in the UK as elsewhere in the world.  

Persons with disabilities are exposed to medical experimentation and irreversible medical treatments without their consent (eg sterilization, abortion, and interventions aiming to correct or alleviate a disability, such as electroshock treatment and mind-altering drugs including neuroleptics.

The Special Rapporteur is concerned that in many cases such practices, when perpetrated against persons with disabilities, remain invisible or are being justified and are not recognized as torture or other cruel, inhuman or degrading treatment or punishment. The recent entry into force of the Convention on the Rights of Persons with Disabilities provides a timely opportunity to review the anti-torture framework in relation to persons with disabilities.
6. The Special Rapporteur notes that in relation to persons with disabilities, the *Convention on the Rights of Persons with Disabilities* complements other human rights instruments on the prohibition of torture and ill-treatment. For instance, Article 3 of the Convention proclaims the principle of respect for the individual autonomy of persons with disabilities and the freedom to make our own choices.
7. Further, Article 12 recognises our equal right to enjoy legal capacity in all areas of life, such as deciding where to live and whether to accept medical treatment. In addition, Article 25 recognises that medical care of persons with disabilities must be based on their free and informed consent. Thus the Special Rapporteur notes that the acceptance of involuntary treatment and involuntary confinement runs counter to the provisions of the Convention of the Rights of Persons with Disabilities.
8. The experience of our constituency confirms that, inside institutions—as well as in the context of forced outpatient treatment—psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will under coercion, or as a form of punishment.
9. The administration in detention and psychiatric institutions of drugs, including neuroleptics, that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence has been recognised as a form of torture. The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely monitored. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individuals health may constitute a form of torture or ill-treatment.
10. Against a background of endemic reports of indignities, neglect, violence and abuse perpetrated against persons with disabilities, the recognition of these practices for what they are: torture and ill-treatment, and the utilisation of the international anti-torture framework, will afford avenues for legal protection and redress.<sup>17</sup>

ENUSP requests the Joint Committee notes—and affirms—that:

- Coercion is not medicine.
- Coercive psychiatric interventions cannot be a legitimate medical practice.
- Treatment can be given not only without consent, but against the will of the person concerned, in contrast to all other medical “treatment”.

<sup>15</sup> World Conference on Human Rights

<sup>16</sup> [http://www.unhcr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhcr.ch/html/menu3/b/h_cat39.htm)

<sup>17</sup> Subject, of course, to the UK’s ratification of the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.

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- Some attempts have been made in recent years to extend free and informed consent to the mental health context. However, law and custom is still based on the days of the asylum when patients had no power to refuse.
  - Coercion cannot heal.
  - People in psychological distress and anguish seek healing and alleviation of pain. Many do find psychiatric medications provide relief or a way to manage disabling thoughts and feelings. However, psychiatric interventions with these same medications against a person's will are not justified as a medical practice.
  - Forcible interventions should be understood as a profound violation of the physical and mental integrity of any person, performed for the purpose of changing the individual's personality;
  - Coercion necessarily involved both injury and distress.
  - We would question whether forced treatment can correctly be construed as medical help, when it appears to be no more than social control.
  - Coercion in psychiatry changes the role of the doctor, who is not free to focus on serving the expressed needs of the patient, but has taken on a duty to third parties [usually the State] to control the patient.
  - Coercion in psychiatry is still widespread and hundreds of thousands of European citizens are deprived of their legal capacity so as to authorise medical treatment against the will of the individual concerned.
  - In almost all countries, the legal assumption is that treatment is an unquestionable good, and that people diagnosed must be compelled to accept it.
  - In incorporating the European Convention on Human Rights into British Law, the Human Rights Act perpetuates—rather than challenges—the lesser regard for the autonomy of patients with mental illness. (Szmukler & Holloway, 2000).
  - Bindman et al [2003] (a group of British psychiatrists) argue that despite the Act, patients' capacity to make treatment decisions is still essentially ignored:  
 “When persons are admitted in a general hospital for any other problems—stroke, cancer, broken hip, x rays, tests—these persons wouldn't dream of allowing the doctors, nurses, or nursing aides to lock them up, shock them, tie them up or drug them, and the staff wouldn't do it to them. Those patients are treated with compassion, caring, respect, and dignity, and persons who have serious emotional/mental problems need to be treated the same.”
  - It is social attitudes, not lack of treatment, that have been shown over and over again to be the main barrier to social inclusion for many people diagnosed and treated as mentally ill.
  - It is our clear understanding that States that ratify or accede to the UN Convention on Rights for People with Disabilities necessarily undertake to enact laws and other measures to improve disability rights and to repeal legislation and change customs and practices that discriminate against disabled people.
  - The underlying foundation of the Convention is, self evidently, the principle that welfare and charity should be replaced by the equal enjoyment of rights and freedoms.

24 October 2008

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#### **Memorandum submitted by RNIB**

RNIB welcomes the fact that the Joint Committee has raised a number of issues relevant to ratification with the Government. The UN Convention on the Rights of Persons with Disabilities represents a historic point in the battle for disabled peoples' rights, and a potentially huge opportunity to increase the enjoyment of those rights both in the UK and worldwide.

This brief submission cannot cover all the areas of the Convention that are important to blind and partially sighted people. We limit ourselves therefore to issues that the Committee is focusing on specifically.

#### **TIMETABLE FOR RATIFICATION**

RNIB believes that the UK Government must ratify this Convention by end of 2008, as promised. We believe that the Government must not make its ratification contingent upon the UK's ability to immediately meet all the requirements of the Convention. Even as the Convention was being negotiated, it was accepted that the realisation of the rights in its articles would inevitably have to be progressive. Ratification without further delay will send a signal that the UK means business with regards to disabled peoples' rights.

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#### PROPOSALS FOR RESERVATIONS AND INTERPRETATIVE DECLARATIONS

We believe that these should be avoided wherever possible. RNIB believes strongly that they should not be used to undermine the fundamental human rights the Convention identifies.

RNIB understands however that in a small number of areas the Government might wish to clarify its interpretation of the Convention. In the field of education, we recognise that a reservation may be necessary to permit the continuation of special school provision for the most severely disabled people in a limited number of cases. This is in accord with Article 24.3 (C), but a reservation but may be desirable for the avoidance of doubt.

Likewise there might be some need to interpret Article 27 on Work and Employment to ensure that some level of supported employment, for example Remploy and workshops for blind people, is allowed to continue where disabled people wish this to happen.

#### RATIFICATION OF THE UN CONVENTION BY THE EUROPEAN COMMUNITY

RNIB is pleased to note that the European Commission has adopted the proposal for “a Council decision to conclude, on behalf of the European Community, the UN Convention on the Rights of Persons with Disabilities”.

We urge the UK Government to support this process with the aim of ensuring the strongest possible implementation for disabled people.

#### COMPATIBILITY OF EXISTING UK LAWS AND PRACTICES WITH THE UN CONVENTION

Due to EU Internal Market rules, the Disability Discrimination Act does not prevent manufacturers from making goods that are inaccessible to blind people. This is particularly problematic for items with on-screen digital displays such as televisions, washing machines and even, increasingly, digital radios. Meeting the UN Convention requirements in article 9 regarding access to ICT would help to remove this problem, but will no doubt require changes of law at EU level.

The EU Commission is considering the possibility of proposing regulation on “eaccessibility” in 2009. RNIB looks to the UK Government to support such a proposal so as to close this loophole in the area of ICT across the EU and better meet the goals of Article 9 of the UN Convention.

There are too many other areas of life in the UK where practice—even if not the law—prevents blind and partially sighted people from fully enjoying the rights to which they are entitled under the UN Convention. Inaccessible information from the NHS, Councils, and from suppliers of goods and services, inaccessible transport and inadequate provision of social care are but a few such areas.

RNIB understands that the Government is analysing the UK’s compatibility with the UN Convention requirements. We expect that this exercise will identify a list of areas where more needs to be done for blind and partially sighted people, as well as many others. We look forward to working with the Government to help implement the changes needed to meet these shortcomings.

#### RATIFICATION OF THE OPTIONAL PROTOCOL AND THE RIGHT TO INDIVIDUAL PETITION

We believe that the Government should ratify the Optional Protocol. This would demonstrate the seriousness of the UK government’s commitment towards the UN Convention. It should be remembered that the Government took a lead role in the Convention negotiations. The Government says it does not normally sign optional protocols, but made an exception to this policy for the Convention on the Elimination of Discrimination against Women (CEDAW), so as to “test” whether it was useful to sign such protocols. However, the Optional Protocol of CEDAW has not been tested thoroughly enough to draw any conclusions, (only two cases have arisen from the UK under this protocol). This “test” should therefore be deemed irrelevant to the Government’s deliberations about signing and ratifying the Optional Protocol.

#### ABOUT RNIB

RNIB is a membership organisation with over 10,000 members who are blind, partially sighted or the friends and family of people with sight loss. Eighty per cent of our Trustees and Assembly Members are blind or partially sighted. We encourage members to be involved in our work and regularly consult with them on Government policy and their ideas for change.

As a campaigning organisation of blind and partially sighted people, we fight for the rights of people with sight loss of all ages in each of the UK’s countries. We work to:

- improve access to treatment for sight threatening conditions and raise awareness of eye health;
- improve provision within health and social care services;
- increase the amount and range of accessible information;
- promote equal access to learning throughout the life course;

- tackle discrimination in employment and get more blind and partially sighted people into work; and
- ensure a secure income for blind and partially sighted people unable to work or who have retired.

We also provide expert knowledge to business and the public sector through consultancy on improving the accessibility of the built environment, technology, products and services.

30 October 2008

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### Memorandum submitted by TUC

#### 1. SUMMARY

1.1 The TUC represents 58 trade unions with six and a half million members working in all sectors. The TUC has a democratic representative structure enabling disabled workers to express their views and to advise the TUC on all aspects of policy relating to disability.

1.2 The TUC supported the process of drafting the UN Convention on the Rights of Persons with Disabilities through involvement in the advisory group of disabled people who took part in the negotiations leading to its completion, and welcomed it as an historic milestone in the establishment of human rights for disabled people around the world. The UK Government's early signing of the Convention was welcomed. The Government's commitment to ratify the Convention by the end of 2008 is of great importance but the attachment of reservations is neither useful nor necessary.

1.3 We therefore urge Ministers to ratify the Convention and the Optional Protocol without reservations as soon as possible.

#### THE CASE FOR RATIFICATION WITHOUT RESERVATION

#### 2. IMPACT AND MESSAGE

2.1 The UN Convention on the Rights of Persons with Disabilities is a step of enormous significance for disabled people everywhere, including in the UK. The rights it enshrines, and the message it sends out by its very existence, represent the first global recognition of the human rights of a very large number of people characterised most often by exclusion and/or second-class status. The Convention's approach to disability is rooted in the understanding that disabled people should be equal members of society with the same human rights as all others, not that they are to be seen as passive objects, recipients of charity with all that entails in terms of status and popular attitudes. In that critical respect, the Convention matches the UK Government's vision, expressed in the objective of achieving equality for disabled people by 2025—a vision shared by the TUC. The adoption of the means to achieve this ambitious objective must, logically, form part of the practical plans for implementation and in that respect too the TUC believes that the UK is among a small number of states that have taken the lead in introducing the material steps necessary (in most but not all policy areas) to advance towards disability equality. The consequence of this leading role ought to be recognition of the importance of setting an example to other states.

2.2 Specifically, many positive steps have already been taken over the last decade with the several improvements to the Disability Discrimination Act, and the commitment given to maintain and improve current levels of legal protection against disability discrimination through the Equality Bill. In addition, it is understood that the Government will act to reverse the retrogressive impact of the House of Lords decision in *Malcolm*, and the TUC will respond positively to the forthcoming consultation on this question. In all these areas, the UK Government has shown a continued understanding of and commitment to the vision laid out in 2005 and reflected in the 2025 target date.

2.3 But the question of perception is of great importance. Whereas early UK signature of the Convention sent out a powerful message to disabled citizens that their government recognised and supported its message of inclusion, equality and human rights, a much greater significance attaches to ratification. There is already disquiet that while 37 states have ratified the Convention to date, including several in Europe, the UK is seen to delay and to consider reservations. The Minister's existing commitment that ratification will take place before the end of December is most welcome, but it is a matter of concern that either this date might be delayed, or else that it will be met, but that in the process, reservations or interpretative declarations will have been appended that give a different message to disabled people in this country: the message that yes, the UK believes you have human rights like everyone else, but unlike disabled people in other states, the UK declines to recognise them in some areas.

2.4 Further, the signal that early signature sent to other countries that they too should support the Convention would be undermined if the UK delayed further, or placed conditions upon, its ratification. This would represent a retreat from the vision of equality for disabled citizens both in terms of perception, but also in terms of reality. It is also not necessary.

### 3. NO RESERVATIONS ARE NECESSARY

3.1 The TUC understands that the Government is considering either reservations or interpretative statements in several areas as a result of requests from departments. It further understands that following detailed consideration, several of these have been withdrawn or recognised not to be needed. For the reasons advanced above, the TUC view is that no reservations or interpretative declarations should be attached to ratification.

3.2 Article 46 of the Convention allows states parties to fulfil their obligations under the Convention over time. Therefore the only possible reason for requiring reservations would be a determination that the UK does not intend, even over time, to comply with all the obligations of the Convention. If that were true, the conclusion is that the UK should not have become a party to the Convention at all, as it must be the case that signing it indicated an acceptance that some of the obligations thereby assumed must lead to changes in law or practice within the UK. The Convention itself states (article 46(1)) that reservations incompatible with the “object and purpose of the present Convention shall not be permitted”. However, if (as the TUC believes) that is not the starting point for the reservations, but rather that certain current laws and practices do not comply with Convention obligations, then it would appear that the UK is adopting an extremely conservative approach, quite in contrast to numerous other states parties including many that are in a similar position to the UK that have decided that they can ratify the Convention without reservations.

3.3 It is understood that a reservation is wanted in respect of the armed forces. The TUC has long stood by the position argued previously by the Disability Rights Commission, and now by the Equality and Human Rights Commission, that the current legal blanket ban should be removed.

The critical point in this argument is that even without the ban the armed forces would not be compelled to recruit any person who was not capable of doing the job. Ratifying the Convention without reservation would still not lead to the armed forces being required to recruit personnel not able to meet the requirements of the job. However, it is also evident—if only from the reported fact of numbers of service people apparently retained after disabling accident or injury—that there are many jobs within the armed forces that do not require full active service fitness and capability.

The TUC believes that the call for this reservation may originate in a conservatism comparable, historically, with the similar ban on employing lesbian, gay or bisexual people. The MOD supported that ban at the time although there have been no reports of any of its argued bad consequences having transpired subsequent to its removal.

3.4 The other significant area, where interpretative declarations are sought, concern education and the commitment in article 24 (2a) that “persons with disabilities are not excluded from the general education system” and that (article 24(2b)) “Persons with disabilities can access an inclusive ...education...”, because of the continued existence of special schools. It is understood that discussion is ongoing with the DCSF over why such declarations are necessary, given the allowance for progressive implementation allowed by Article 46.

The TUC was involved in the consultations that led to the Special Educational Needs and Disability Act 2001. This legislation affirmed that the overriding objective was to achieve inclusive education for disabled children, while recognising that for a small minority a specified range of circumstances might require education through segregated (special) schools. However, the long-term objective was understood to be the achievement of comprehensive inclusive education. Apparently, reaching that point was dependent on sufficient resources being made available.

Therefore there is no need for Interpretative Declarations around these articles, given compliance with the commitment to inclusive education as the means to achieve it become available.

### 4. OPTIONAL PROTOCOL

The Optional Protocol offers the means for individuals to seek redress under the Convention and the TUC supports UK citizens having the means to enforce the rights that the Government has signed up to. Not to ratify the Protocol at the same time as the Convention would also signal a retreat from the principles underlying both.

### 5. OTHER ISSUES

The word limit precludes explaining the TUC concern over the Government’s involvement of disabled people in the current process.

The appointment of the EHRC as an independent monitoring body for the Convention is welcome.



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**Memorandum submitted by Tabitha Collingbourne<sup>18</sup>**
**UK SOCIAL WELFARE LAW AND THE UN CONVENTION**
**ABSTRACT**

On ratifying the UN Convention, the UK will undertake to “ensure and promote the full realization of all human rights and fundamental freedoms”, including economic, social and cultural rights, “for all persons with disabilities”.<sup>19</sup> This submission argues that effective implementation of that undertaking will require some radical changes in UK social welfare law and practice. The incipient shifts in thinking from “welfare” towards “rights” currently identifiable in the policy field are not yet reflected in the real lives of disabled people, or in existing legislation or service delivery. Furthermore, some aspects of existing law and practice, together with the Government’s consideration of potential reservations to the UN Convention, threaten to hinder such transformation.

**INTRODUCTION**

The UK intends to ratify the UN Convention on the Rights of Persons with Disabilities, an international treaty that fully integrates civil, cultural, economic, political and social rights in the context of disability. Before doing so, the UK government will seek to ensure that it can implement the Convention’s provisions and therefore comply with its obligations.<sup>20</sup> This submission briefly considers the capacity of UK social welfare law and practice to contribute to that implementation.

**DISABILITY RIGHTS IN THE UK**

In the UK, the Human Rights Act 1998 offers some protection to disabled people’s civil and political rights. In addition, disability discrimination is prohibited in some socio-economic fields such as employment, education and housing under the Disability Discrimination Act 1995, which also imposes on public bodies a duty to promote disability equality in the provision of their services. However, the UN Convention demands more: it requires not only non-discrimination, but also the positive promotion and fulfilment of all human rights, including socio-economic rights.<sup>21</sup>

**ECONOMIC, SOCIAL & CULTURAL RIGHTS**

Economic, social and cultural rights have not been incorporated into UK law. Indeed, the UK in its latest report to the UN Committee on Economic, Social and Cultural Rights confirmed that “[t]he [Covenant] has not been and is not expected to be incorporated into domestic law... The Government is not convinced that it can incorporate the rights contained in the ICESCR in a meaningful way within the British legal system.”<sup>22</sup> In their place, we have a complex assortment of “social welfare” law, some dating back to the 1940s, which risks being incompatible with the purpose and principles of the new UN Convention.

**“SOCIAL WELFARE” LAW**

The “laws, policies and practices”<sup>23</sup> on which the UK relies for its implementation of the economic and social rights of disabled people largely have their roots in the post-war welfare state. They have not yet made the necessary transition from “welfare” to “rights” thinking, which involves moving away from seeing disabled people as problems towards seeing them as holders of rights.<sup>24</sup> For instance, the National Assistance Act 1948 still provides the legal foundation for social care, including residential care and “welfare arrangements for blind, deaf, dumb and crippled persons”.<sup>25</sup> This can be contrasted with the (so far unsuccessful) Independent Living Bill 2008, whose principles include that “disabled persons are the best judge of their own requirements”, that they should determine their own living arrangements and be enabled (where necessary) to make their own decisions.<sup>26</sup>

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<sup>19</sup> CRPD Article 4(1)

<sup>20</sup> Minister for Disabled People (Anne McGuire), Statement 6 May 2008

<sup>21</sup> CRPD Articles 1 & 4

<sup>22</sup> Fifth Periodic Report from the United Kingdom..., July 2007, E/C.12/GBR/5, paras 74/5 [www.justice.gov.uk/docs/ICESCR-report-part1.pdf](http://www.justice.gov.uk/docs/ICESCR-report-part1.pdf)

<sup>23</sup> *ibid*

<sup>24</sup> Quinn, G & Degener, T, et al, “Human Rights and Disability: the current use and future potential of United Nations human rights instruments in the context of disability”, United Nations, 2002 HR/PUB/02/1 [www.ohcgr.org/english/issues/disability/study.htm](http://www.ohcgr.org/english/issues/disability/study.htm)

<sup>25</sup> NAA1948 ss 21 & 29

<sup>26</sup> [www.publications.parliament.uk/pa/cm200708/cmbills/084/08084.i-ii.html](http://www.publications.parliament.uk/pa/cm200708/cmbills/084/08084.i-ii.html)

Another, more practical, problem is the complexity, inconsistency and ineffectiveness in the disability context of social welfare law.<sup>27</sup> Unnecessary bureaucracy is a major issue in its delivery<sup>28</sup>, and administrative redress systems such as complaints or Tribunals are complex, inaccessible and often counterproductive.<sup>29</sup> Meanwhile, disabled people are not only more likely than others to experience a problem that might be resolved through this system, they also experience more such problems, particularly those relating to socio-economic matters such as housing or welfare benefits. Experience of these problems can in turn lead to the kind of “spiralling problem sequences” that result in social exclusion and the denial of human rights.<sup>30</sup>

There are, however, signs of incipient change.

#### CONCEPTUAL SHIFTS

The government’s 2005 report on Improving the Life Chances of Disabled People talks at length of equality, inclusion, dignity and respect. The subsequent work of the Office for Disability Issues on independent living and individual budgets has recently been acknowledged as “contribut[ing] towards the Government’s work to ratify the United Nations Convention on Disability Rights”<sup>31</sup>. The current Welfare Reform Green Paper<sup>32</sup> recognises links between work, financial support and public services in the realisation of equality and rights. The proposed reforms are said to “reflect [the government’s] drive towards world-class public services across the board—delivering personalised services tailored to individual needs”. Consultation on those “personalised” services is underway. None of this policy is explicitly couched in the language of human rights. However, it seems that the government is now willing at least to consider ways of incorporating some socio-economic rights into UK law through a potential British Bill of Rights.<sup>33</sup>

#### BARRIERS TO TRANSITION

These shifts in thinking are not yet reflected in the real lives of disabled people. Indeed, aspects of current law and practice continue to hold back that process of transformation. Although the Office of Disability Issues acknowledges “that there is a gap between national policy and people’s real experiences”, it believes that “change can be achieved without new legislation”.<sup>34</sup> Any renewal of legislation is resisted, and the existing complexity, bureaucracy and inaccessible redress systems continue.

At the same time, the resources required to translate policy into reality are increasingly severely rationed, leaving many people without support, and leading the Commission for Social Care Inspection to ask whether “the present situation is both sustainable and—in pursuit of an outcomes focused personalisation agenda—defensible”.<sup>35</sup> Baroness Campbell identifies current levels of social care rationing as “the major problem which blocks the transformation of social care from a welfare safety net, to an empowering human rights, public support service.”<sup>36</sup> This transformation is not simply about more resources; it entails changes in the planning and delivery of existing resources<sup>37</sup> to reflect that conceptual shift from State “welfare” provision to recognition of the right to independent living as set out in Article 19 of the UN Convention.

Furthermore, the UK government is considering ratifying the UN Convention with reservations. Clearly any possible ratification issues must be investigated. The resolution of potential issues in respect of choice of residence and aspects of mental health legislation is welcome, and further outcomes are awaited.<sup>38</sup> However, the fact that these reservations are considered at all further undermines the credibility of the government’s own policy objectives. Choice of place of residence is fundamental to independent living under Article 19 of the Convention and a key component of the Improving Life Chances report. The right to access education in one’s community is fundamental to the development of human potential and self-worth under Article 24, and to the early inclusion and transition to adulthood of disabled children, again key components of the Improving Life Chances report. Mental capacity and mental health provisions are central to autonomy and equality under the law and to protection from abuse. And a lack of accessible communication

<sup>27</sup> see eg Strategy Unit, “Improving the Life Chances of Disabled People”, Chapter 2: the current situation and its causes’, 2005; “Fairness and Freedom: the final report of the Equalities Review”, 2007; O’Grady et al, “Disability, Social Exclusion and the consequential experience of justiciable problems” *Disability & Society*, 19/3, 2004

<sup>28</sup> Maynard Campbell, S, Maynard Lupton, A, “Bureaucratic Barriers to Normal Day to Day Activities”, Muscle Power!, 2000 [www.leeds.ac.uk/disability-studies/archiveuk/Campbell/bureaucratic%20barriers.pdf](http://www.leeds.ac.uk/disability-studies/archiveuk/Campbell/bureaucratic%20barriers.pdf)

<sup>29</sup> eg Adlker, M, Gulland, J, “Tribunal Users’ Experiences, Perceptions and Expectations: a Literature Review” Council on Tribunals, November 2003; Hurstfield, J et al, “Monitoring the Disability Discrimination Act (DDA) 1995: Phase 3”, DWP/DRC 2004

<sup>30</sup> Legal Services Research Centre English & Welsh Civil & Social Justice Survey; O’Grady et al, “Disability, Social Exclusion and the Consequential Experience of Justiciable Problems” *Disability & Society*, 19/3, 2004, pp259–271

<sup>31</sup> [www.officefordisability.gov.uk/working/independentlivingstrategy.asp](http://www.officefordisability.gov.uk/working/independentlivingstrategy.asp)

<sup>32</sup> “No One Written off: reforming welfare to reward responsibility”, DWP 2008

<sup>33</sup> Joint Committee on Human Rights, 29th Report “A Bill of Rights for the UK?” para 158 ff

<sup>34</sup> Office of Disability Issues, Independent Living Strategy 2008, Executive Summary p 10

<sup>35</sup> Commission for Social Care Inspection, “Lost to the System: The Impact of Fair Access to Care”, CSCI 2008, Executive Summary para 34

<sup>36</sup> Campbell, J, “Social Care as an Equality and Human Rights Issue”, National Centre for Independent Living, “Independently Newsletter”, February 2008 p 9

<sup>37</sup> see, for instance, Heywood, F, Turner, L, “Better Outcomes, Lower Costs”, ODI/University of Bristol, 2007

<sup>38</sup> at the time of writing. Letter to Andrew Dismore, MP from Anne McGuire, MP dated 24 September 2008, JCHR website

denies freedom of expression and limits both personal development and social inclusion. All are inextricably linked to the Convention's—and the government's—underlying principles of equality, inclusion, dignity and respect.

## CONCLUSION

On ratifying the UN Convention, the UK will undertake to “ensure and promote the full realization of all human rights and fundamental freedoms”, including economic, social and cultural rights, “for all persons with disabilities”.<sup>39</sup> Effective implementation of that undertaking will require some radical changes in UK social welfare law and practice. Despite positive developments, the incipient shifts in thinking from “welfare” towards “rights” which are currently identifiable in the policy field are not yet reflected in the real lives of disabled people. The resistance evidenced by the potential reservations to the Convention, and by the failure to back policy with legislation and with effective resources, hinders the development of those new discourses into a new “common sense”. If such policies are to actually begin to change people's lives for the better and so contribute to the effective implementation of all the UN Convention rights in the UK, they will need to be translated into a fundamentally different kind of law and a fundamentally different kind of practice.

*October 2008*

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### Memorandum submitted by RESCARE

1. Further to your Committee calling the Rt. Hon Mr Jonathan Shaw MP, Minister for Disabled People, to give oral evidence in respect of the above we wish to express our support for the Government's position in ratifying the UN Convention by the end of 2008 including its reservation and interpretive declaration in respect of the Convention's Article 24: Education.

2. Its Department for Children, Schools and Families has 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 interpretive 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.

3. Run by families for families we consider that the above reservation and interpretive declaration are essential in meeting the educational 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 6 May 2008 re Article 24 Education by the then Minister for Disabled People Anne McGuire MP on behalf of the Government as above.

4. As a current relevant example we offer as evidence excerpts from our Response, as follows, to the closure of five special schools by the South Tyneside Authority which has raised serious concerns and opposition amongst the parents and relatives involved, not only for their own children but for those that the future will surely bring.

5. Rescare Response to the proposed closure of five special schools by the South Tyneside local authority namely Epinay, Bamburgh, Margaret Sutton, Oakleigh Gardens and Greenfields.

Rescare supports choice in Education including properly resourced mainstream, special day and residential schools. Run by families for families and representing through 40 affiliated organisations plus individual and family members, thousands of families with sons, daughters and relatives with learning disabilities and/or autism it is on behalf of our members affected by the proposed closure by the South Tyneside Authorities of five of its special schools that we strongly oppose such closures.

6. The proposal cannot be justified as a “national plan” as stated—DfSE (now the Department for Children, Schools and Families) said, “Inclusion is not an agenda to close special schools”.

7. The Government's Office for Disability Issues in a Consultative Document 2007 “Equality for disabled people: How will we know we are making progress?”, in discussing support for disabled children including those with Special Educational Needs and their families its item 41 said:

“There are a range of possible areas which might be suitable for monitoring over time in order to determine whether the government is making progress in terms of equality of opportunity for disabled children (including those with statements of Special Educational Need), particularly in the years leading up to their making the transition to adulthood. For example: To measure the effectiveness of the government's policies to encourage and support parental choice in education, and evaluate the impact of these policies on outcomes for disabled children, we could amongst other things, monitor parents' ability to access the educational provision of their choice (be it

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<sup>39</sup> CRPD Article 4(1)

mainstream or special school), the suitability of school environments and support provided for disabled pupils, the educational achievements of disabled children and the proportion of disabled young people who go on to further or higher education”...

8. 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 (1% per year) who will surely require further developed properly resourced mainstream, special day and residential schools. These, as a choice option for parents, is a principle which Governments, past and present have afforded to all parents and which it intends to remain so.

9. 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 segregationist?

10. In the meantime by refusing referrals and offering only the mainstream option now, and in the future, the South Tyneside Local Authority is pre-empting its own consultative process in an exercise of denying adequate information re special schools as a choice option for parents who do know their child best. This could constitute an act of discrimination against their rights, and also not being in the best interests of their sons, daughters and relatives as is demanded by the Mental Capacity Act 2005.

11. One has to ask when did “modernisation” equate with closure? This and other conjectures are compatible with a process of using words to cover actions which are based on budgetary targets and not needs led. An abuse of terminology is invoked to cover intent in what amounts to be an experimental exercise in social engineering. Such children should not be used as a battering ram to pursue that which evidence increasingly proves not to be in their best interests.

12. In meeting the educational needs of children and young persons with learning disabilities and/or autism an holistic approach is essential beyond just the physical. This is necessary in order to accommodate their unique life long requirements which are deserving of meaningful choice options at the appropriate time by their families whose commitment is equally life long.

13. What the South Tyneside authorities are proposing would be the wholesale dismantling and loss of a well proven and essential part of an inclusive educational service on the false pretext of being over-populated and an unnecessary rationalisation. It is the quality of outcome for each individual that is the ultimate criterion not the process.

14. The proposals do not acknowledge the growing body of evidence, including the comments of Baroness Warnock who first, in 1978, recommended inclusion but now admits it has failed. A report by academics at Cambridge University suggest that many children with learning disabilities and special needs placed in mainstream, often undermining the education of others, are leaving teachers exhausted as they struggled to cope, often delegating responsibility for special needs pupils to classroom assistants...

15. The danger is that the expertise, leadership and relationships built up through the special schools sector is to be lost, submerged by the current fashion of ideological pursuit that a “one size fits all” imposition. “Idealism” as John Galsworthy said “increases in direct proportion to ones distance from the problem”.

16. 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 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”...

17. A Parliamentary Early Day Motion on behalf of RESCARE 2007 No. 2383 supporting Special Schools called on Government to re-affirm the principle of their choice as an option for parents whose children have special educational needs and to take effective steps to stop the unwarranted closure of special day and residential schools by local authorities which is contrary to stated Government policy. The EDM was signed by 103 MPs.

18. We asked that the members of the South Tyneside Select Committee give our submission the fullest consideration to the benefit of our members, and supportive non members alike, and thanking them for the opportunity to do so.

19. We offer the above to your Parliamentary Joint Committee on Human Rights to fully justify the inclusion of the Government’s necessary interpretive declaration and reservation in the Conventions Article 24.(Education) to avoid the dangers of such ill conceived practices as exemplified by the South Tyneside Authority.

20. The implementation of the Government’s position will ensure the retention of the expertise and environmental friendly special schools as a necessary and rightful parental choice option within an inclusive educational service of properly resourced mainstream, special day and residential schools.

We thank you for the opportunity to submit evidence and trust that our response will be given your fullest and hopefully positive consideration.

28 October 2008

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### Memorandum submitted by Leonard Cheshire Disability

#### INTRODUCTION

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, an alliance of 29 disability organisations, the aim of which is to ensure that the UK ratifies the CRPD without reservations.

We welcome this opportunity to give evidence on this issue to the Joint Committee on Human Rights.

Our main points are the following:

1. Leonard Cheshire Disability commends the UK government on its commitment to disabled people's human rights, as evidenced by its signature of the CRPD.
2. We staunchly support ratification without reservations.
3. We believe that the European Community's confirmation process does not constitute a barrier to the UK's ratification.
4. Regarding compatibility issues, we are concerned about the recent Malcolm judgement.
5. We support UK accession to the Optional Protocol.

#### *1. Leonard Cheshire Disability commends the government on its commitment to disabled people's human rights, as evidenced by its signature of the CRPD*

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 persons. The CRPD ensures that the world's 650 million disabled persons 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 30 March 2007.

Leonard Cheshire Disability commends the government on its commitment to disabled people's rights, and now strongly supports completing the process by ratifying the Convention, thus giving legal force to its provisions in the UK.

#### *2. We staunchly support ratification without reservations by the UK government*

As a disability charity, we naturally support the ratification of the CRPD at the earliest possible opportunity; but the UK should not ratify any international treaty until it is in a position to ensure that it can implement its provisions and comply with its obligations. Ratification will ensure that the UK does not miss again the chance to participate in the election of members of the Committee on the Rights of Persons with Disabilities, the monitoring body of the CRPD.

However, our main objective is that the Convention is ratified without reservations or interpretative declarations. We hope that giving the government enough time to ensure that British legislation, policies, practices and procedures comply with the Convention will convince it that there is no need to reserve, especially in view of 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 must guarantee exactly the same rights to disabled citizens as to non-disabled ones.
- (b) It is also a matter of international standards; the UK cannot guarantee anything less than what 136 countries worldwide have signed up to.
- (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 would send the wrong signal that the UK anticipates that there will be violations of rights in those areas where it has reservations.
- (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.

We are aware—and concerned—that the government is considering reservations to the following articles:

- (a) Article 27.1: reservation in respect of service in the armed forces. While the MoD already complies with legislation in terms of retaining employees who acquire an impairment or condition in the course of their service, it wants to reserve on recruiting disabled people. We believe this is unnecessary, as 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.
- (b) Article 24: reservation in respect of inclusive schooling in the community, and 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. Leonard Cheshire Disability favours ratification without reservations, but would agree with an interpretative declaration including a deadline for realising inclusive education, such as the one put forward by Equality 2025 and the Council for Disabled Children<sup>40</sup>.
- (c) Article 18: reservation and interpretative declaration to retain full 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 just dropped similar reservations to the UNCRC. We also believe that introducing an interpretative declaration stating that disabled persons shall not be given more rights than non-disabled persons in respect of liberty of movement, freedom to choose their residence and nationality is unnecessary as the Convention does not stipulate any such treatment.
- (d) Outstanding issues in respect of article 12.4 and article 30.4: We hope that remaining outstanding issues can be resolved without reservations or interpretative declarations; in particular, we call on the UK government to sign up to full equality concerning the exercise of legal capacity by disabled people (article 12.4) and interpretative measures (article 30.4), especially as BSL has been recognised as a language in its own right.

### 3. *We believe that the European Community's confirmation process does not constitute a barrier to the UK's ratification*

Leonard Cheshire Disability agrees that the process of conclusion of the Convention by the European Community must be carefully examined, in particular the three following aspects: competence delimitation; overlap of member state and EU monitoring and reporting processes; possible conclusion of the optional protocol.

However, completing this scrutiny is not a prerequisite for ratification by the UK. Indeed, Hungary, Slovenia and Spain ratified the CRPD before the Commission proposal for EC conclusion<sup>41</sup> was published; Austria did so shortly afterwards. The scrutiny process must be completed before the UK can support the Commission proposal for conclusion by the European Community, but the adoption procedure effectively grants the UK a right of veto in the Council. This system will ensure that competence conflicts (including over potential reservations or interpretative declarations by EU member states) will not arise.

We therefore believe that issues of EC competence do not create any barriers to ratification by the UK.

<sup>40</sup> "The UK government is committed to developing an inclusive education system where mainstream primary and secondary schools and staff will have the capacity to effectively educate the full range of disabled children. Currently the general education system must be taken to mean mainstream and special schools with some children whose needs are met by specialist provision being educated some way from their home. We aim through improving capacity that by 2025 all will be able to have their needs met in local mainstream provision."

<sup>41</sup> COM(2008) 530 final/2

4. *Regarding compatibility issues, we are concerned about the recent Malcolm judgement*

We are very concerned by the recent Malcolm judgement by the House of Lords, which significantly narrowed the scope of protection offered against discrimination on the grounds of disability in respect of access to goods and services. We suspect that it might conflict with the government's duty to end all forms of discrimination under article 4 of the Convention and urge the government to address this issue at the earliest possible opportunity.

5. *We support UK accession to the Optional Protocol*

Leonard Cheshire Disability supports the ratification of the Optional Protocol giving disabled persons the right to individual petition to the Committee on the Rights of Persons with Disabilities once they have exhausted national remedies.

We believe that an enforcement mechanism would give more substance to the rights enshrined in the Convention. Moreover, ratifying the optional protocol could help the ministry of justice in its review of the UK's position on individual petition.

31 October 2008

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**Memorandum submitted by NDCS**

NDCS welcomes the opportunity to submit evidence to the Joint Committee on Human Rights on the progress the Government is making towards ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD). Throughout our submission, we highlight how the needs of deaf children in the UK and globally must be taken into account. Our submission provides a response to the issues requested by the Committee.

1. BACKGROUND

1.1 The National Deaf Children's Society (NDCS) is the national charity dedicated to creating a world without barriers for deaf children and young people. We represent the interests and campaign for the rights of all deaf children and young people from birth until they reach independence. There are over 35,000 deaf children in the UK and three more are born every day. Worldwide, there are around 20 million deaf children, 80% of whom live in developing countries. Deaf Child Worldwide works with partners in the countries where need is greatest throughout the world and is the international development agency of NDCS.

1.2 NDCS believes that the family is the most important influence on a deaf child's development. NDCS supports the deaf child through the family as well as directly supporting deaf children and young people themselves.

1.3 By deaf, we mean anyone with a permanent or temporary hearing loss. This could be a mild, moderate, severe or profound hearing loss. The term deaf does not presuppose the use of any one communication method and could refer to children who communicate orally or through sign language. We also include children who have a hearing loss in just one ear.

2. TIMETABLE FOR RATIFICATION

2.1 Given the extensive UK involvement in the development and early signature of this Convention, NDCS is disappointed that ratification has been subject to delays. A substantial opportunity for the UK to take a leading role in the establishment of a UN Committee on the Rights of Persons with Disabilities has now been missed. NDCS welcome the Committee's support for a speedy ratification process and hope the UK will soon join the 41 states that have already ratified. We hope that further delay can now be avoided and that the second opportunity to join the Committee, when the number of states ratifying reaches 60, is not missed.

3. PROPOSALS FOR RESERVATIONS AND INTERPRETATIVE DECLARATIONS—GENERAL

3.1 NDCS considers that neither reservations nor interpretative declarations are necessary prerequisites for ratifying the Convention in the UK. We therefore welcome the Committee's investigation of the Government's proposals and hope it can encourage the Government to withdraw as many of these as possible. NDCS is concerned that by making reservations the UK risks devaluing the importance of this Convention both in the UK and around the world. NDCS believes that for the UK to ratify without reservation or limitation would demonstrate to the world the importance it places on disability rights.

3.2 The majority of countries in the world do not have any disability rights legislation and so for many deaf children, this will be the first time their rights have been enshrined in law. The CRPD presents an historic opportunity for Deaf Child Worldwide and their partners to promote the rights of deaf children

around the world, many of whom live in poverty and isolation. Only six states have found it necessary to make any reservations or interpretive declarations. Given the long history of disability rights and discrimination legislation within the UK, NDCS believes the Government should be leading by example in this area and making it clear to deaf children throughout the world that they have the same rights afforded to hearing children.

#### 4. PROPOSALS FOR RESERVATIONS AND INTERPRETATIVE DECLARATIONS—EDUCATION

4.1 As education is a key issue for NDCS, we limit our comments to the proposed reservation and interpretive declaration to Article 24. Around the world it is estimated that 98% of disabled children are not in school. The Millennium Development Goal on education will not be met unless widespread action is taken by all states to provide quality education for deaf children. In the UK, deaf children are 42% less likely than hearing children to achieve five grade A to C GCSE's.<sup>i</sup> Deafness is not a learning disability. Our *Close the Gap* campaign is calling on the Government to commit to closing this attainment gap by 2022.<sup>ii</sup>

4.2 NDCS believe the proposed reservation and declaration to Article 24 are inconsistent with other provisions in the CRPD and unnecessary. We understand that the Government's concerns relate to the terms "inclusive" and "in the communities in which they live".

4.3 On the matter of inclusion, NDCS supports the view that inclusion is a state, not a location, and that a continuum of provision is necessary in order to ensure effective inclusion for all deaf children in terms of achievement, full participation and quality of experience.

4.4 For deaf children to experience successful inclusion, their educational placements (whether mainstream or special, maintained, non-maintained or independent) should be "Deaf-Friendly" in accordance with NDCS published guidelines and recommended standards.

4.5 Although provision across the UK has not yet achieved this state of inclusion, NDCS does not accept that Article 24 is in anyway inconsistent with this interpretation of inclusion. Therefore the interpretive declaration is unnecessary.

4.6 The NDCS position on education is based on the principle of informed choice. NDCS sees this as the goal of ensuring that every family of every deaf child is supported with the information and resources they need to make genuinely informed choices in the best interests of their child. The term informed choice is an important concept and is the process whereby parents of deaf children make decisions about communication options, education placements, amplification and technological equipment as a result of receiving impartial, comprehensive, clear and accurate information. We believe this approach is wholly compatible with the CRPD. In particular, it is supported by Article 3 (a) on General principles<sup>iii</sup> and Article 7 (1) on Children with disabilities.<sup>iv</sup>

4.7 On the matter of the term "in the communities in which they live", NDCS again disagrees with the necessity for a reservation. We would remind both the Joint Committee and the Government that this Article must be read in light of provisions in Article 7. Article 7 makes it clear that in all actions concerning disabled children, "the best interests of the child shall be a primary consideration".

4.8 NDCS supports the view that whilst deaf children are entitled to have their needs met in a mainstream school in their local community, for some deaf children full access to and involvement in the educational and social life of a school can be provided only in a specialist placement. Therefore in some cases it may be "in the best interests of the child" to be further away from home. This does not mean that the child should be excluded from the community in which they live and again we would refer to our belief that inclusion is a state rather than a location. We therefore believe the current educational provisions in the UK, including mainstream and special schools, are compatible with the CRPD.

4.9 NDCS strongly believes more can, and should, be done to improve the quality and choice of educational provisions for deaf children both in the UK and around the world; however we do not think this will be achieved by making reservations to the CRPD.

#### 5. RATIFICATION OF THE OPTIONAL PROTOCOL AND THE RIGHT TO INDIVIDUAL PETITION

5.1 The CRPD provides deaf children with the right to express their views freely, and have their views given due weight in accordance with their age and maturity (Article 7). Ratification of the Optional Protocol would provide deaf children with a mechanism to exercise this right by bringing complaints to a UN Committee. Deaf children should have as much of a right as other children to challenge violations of their rights. NDCS is concerned about the lack of an individual right to petition for deaf children and would urge the UK Government to reverse its position on ratification of the Optional Protocol.

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



## REFERENCES

- i Parmit Dhandu MP, then Parliamentary Under-Secretary of State for Education and Skills, March 2007.
- ii NDCS, 2008. *Must do better! Barriers to achievement by deaf children*, London.
- iii “Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices”
- iv “States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize this right”

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**Memorandum submitted by Disability Action**

## INTRODUCTION

1. 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.

2. In Northern Ireland, more than one in five of the population (300,000) has a disability and over one quarter of all families here are directly affected by disability issues.

3. 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.

4. 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.

5. 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

6. The Centre on Human Rights for People with Disabilities welcomes the coming into force of the United Nations Convention on the Rights of Persons with Disabilities. Ratification of the Convention by the UK, without reservations, is vital if rights are truly to become a reality for people with disabilities. The human rights abuses that continue to be experienced by disabled people throughout the UK should not be underestimated.

7. Despite assurances from the Minister for Disabled People, the Centre on Human Rights for People with Disabilities remains concerned that the current timetable for ratification by December 2008 is unrealistic given the range of issues still under consideration. We note from the previous Minister’s correspondence to the Committee (dated 24 September 2008) that a further announcement on progress and expectations for ratification timetabling is expected.

8. The Centre on Human Rights is disappointed at the lack of information from Government regarding the ratification process and the outcome of its review of the compatibility of domestic legislation and administrative practice with the UN Convention. The information available to the public about these processes and the precise form of reservations and interpretative declarations is currently extremely limited. This has a freezing effect on the public debate of highly significant issues. It clearly serves the interest of the public that more information should be disclosed to further this debate about fundamental rights and freedoms. The weight that this consideration carries is considerable at a time when the government itself is promoting a wide-ranging debate about human rights in contemporary British society.

9. Disability Action is deeply concerned that the UK Government is planning to enter reservations and/or interpretative declarations against certain Convention rights. Anne Maguire, the previous Minister for Disabled People, has in a public statement made it clear that the UK is considering reservations of much greater range and impact than any other state which has so far ratified the Convention (Letter to Joint Committee on Human Rights, 24 September 2008). This sends out the message, both to disabled people and to the international community that the UK is willing to accept less than the agreed international standard for the protection of the human rights of disabled people across the UK.

10. Article 2(d) of the 1969 Vienna Convention on the Law of Treaties defines a reservation as “a unilateral statement, however phrased or named, made by a State, when [consenting] to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State” (emphasis added).

11. Any decision to enter reservations to the UN Convention on the Rights of Persons with Disabilities will have an effect on the lives of over 10 million people within the UK and on many more when families and carers are taken into account. Although Article 46 of the Convention permits reservations, Article 50 of the Convention does not allow for reservations which are incompatible with the object and purpose of the treaty. Reservations which defeat the object and purpose of the treaty are necessarily invalid as is the State's consent to the overall treaty. A reservation could also trigger an enquiry by other States as to the compatibility of a reservation with the object and purpose of a treaty.

12. Many of the articles of the Convention do not introduce new rights, but rather explicate the meaning of existing obligations under international human rights law with respect to people with disabilities. Entering a reservation to certain articles within the Convention could create problems for the UK's existing obligations under other international human rights treaties. Meeting the minimal obligations of a reserved right under UNCRPD could well be at the same time to fail to meet certain of the UK's "unreserved" obligations under CESC, for example.

13. The Centre on Human Rights is further concerned that the UK is actively considering interpretative declarations and that these would in fact constitute "disguised reservations". Any reservation would, in effect, be an attempt by UK Government to validate existing practices which negatively impinge upon the lives of people with disabilities. In particular, the Centre on Human Rights is disappointed that a reservation is being proposed to "ensure that disabled children whose educational needs are best met through specialist provision which may be some way from their home can continue to receive it". The Centre on Human Rights believes that such a reservation would be incompatible with the object and purpose of the treaty as set out in Article 1 of the Convention, restricting opportunities for greater inclusion. This has particular implications for some children and young people in Northern Ireland who are required to move away from their families at a young age in order to avail of specialist services in England or Scotland. This is contrary to the ethos of inclusion to which Government has proclaimed to be committed. Any reservation and/or interpretative declaration on Article 24 would simply be an attempt to validate those segregative practices which persist.

14. The detail of proposed reservations and/or interpretive declarations on Articles 12 (exercise of legal capacity), 18 (immigration and nationality) and 30 (cultural services) have not been forthcoming, limiting the transparency of government activity on issues which should be subject to wide ranging public scrutiny.

15. We further draw your attention to the answer given by the Prime Minister to Gerald Kaufman MP on 14 December 2006, in response to a written question about the Convention (Hansard col 1288W) that: "The UK is committed to supporting comprehensive and enforceable rights for disabled people and wishes to see those rights enjoyed by disabled citizens everywhere." The reservations currently being considered by the government represent a withdrawal from this strong statement and such a change of position should be subject to wide ranging public scrutiny. If the UK is truly committed to disabled people's human rights it cannot pick and choose which Convention rights it is willing to support.

16. The Centre on Human Rights strongly argues that UK Government must adhere to the spirit of the Convention by ensuring that, in the lead up to ratification, it actively engages and consults with people with disabilities. There has been no engagement with disabled people by the Northern Ireland devolved administration, or UK Government more generally to date.

17. The Centre on Human Rights strongly believes that UK ratification of the Convention is not dependent on ratification by the European Community. Indeed, the Convention has already been ratified by three member states; Hungary, Spain and Slovenia.

#### CONCLUSION

18. 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.

*November 2008*

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### **Memorandum submitted by the Equality and Human Rights Commission**

#### 1. INTRODUCTION

1.1 The Equality and Human Rights Commission (EHRC) is an independent advocate for equality and human rights in Britain. The Commission aims to reduce inequality, eliminate discrimination, strengthen good relations between people, and promote and protect human rights.

1.2 The Commission incorporates a statutory decision-making Disability Committee with extensive powers.

1.3 The Commission has accepted the UK Government's proposed designation of EHRC as an "independent mechanism" in Britain, tasking the Commission with "promoting, protecting and monitoring" implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in accordance with Article 33 of CRPD.

1.4 In discharging its responsibilities, the Commission will work in partnership and collaboration, with disabled people's organisations including capacity building, with the Scottish Human Rights Commission, the Northern Ireland Human Rights Commission and the Northern Ireland Equalities Commission.

1.5 The Commission will engage in international cooperation including through the UN, though informal relationship building with National Human Rights Institutions (NHRI's) and with others such as the European Disability Forum.

1.6 The Commission believes that the CRPD offers a major opportunity to achieve a paradigm shift in the way disabled people are perceived and treated across the world, from objects of charity and welfare to equal human beings with the full set of rights that status confers. Given the UK's progress on disability rights, it should use the opportunity of CRPD to lead by example internationally by ratifying without further delay.

## 2. KEY POINTS

- The Commission wishes to see the Convention ratified by the UK at the earliest opportunity. Already, delays have cost the UK an opportunity for early and important representation on and influence in relation to the UN Expert Committee on CRPD.
- The Commission does not believe reservations or interpretative declarations are appropriate in ratifying the Convention, as evidenced by the decisions or plans of Governments of similarly placed countries to Britain, including Australia, New Zealand, Austria, France and Germany to ratify without them.
- The UK's decision to express reservations and interpretative declarations is undermining its deserved position internationally as a leader in the field of disability rights and has the effect of depressing the impact of the Convention globally.
- The Commission believes Government has failed to be transparent and to properly consult disabled people and others concerning proposed reservations and interpretative declarations. This is also not consistent with enabling the Commission to fulfil its role as the independent national monitoring body and monitoring the implementation of the Convention. The Commission believes Government should publish for consultation its assessment of the UK's compliance with the Convention articles, the draft text of the reservations and interpretative declarations, and its rationale for expressing all reservations and interpretative declarations.
- The Commission strongly believes the UK should ratify the Optional Protocol which would allow individuals who allege that their rights under the Convention have been breached to petition the CRPD Committee and to ask the Committee to give its opinion. This would also be consistent with the EU proposal to for the European Community to ratify the Optional Protocol.
- The Commission is concerned about the effectiveness of arrangements concerning Convention Article 33 including the absence of robust focal points and coordinating mechanisms in the devolved administrations, inadequate resourcing of the respective NHRI's of Scotland and Northern Ireland and no defined action to increase the capacity of disabled people's organisations to participate in the promotion and monitoring process.
- The Convention reflects and promotes further a paradigm shift in the way disability is perceived and dealt with in public policy from a primary focus on and preoccupation with health and welfare to one of human rights. This shift should be reflected in the choice of focal point and coordination mechanism within Government. Whilst the Commission believes the Office for Disability Issues provides the best focal point and point of coordination with other delivery agents, assurances are sought that in executing this task it is genuinely independent of interference by its parent Department of Work and Pensions.
- The Commission believes Government should develop and consult with a range of stakeholders on an action plan for implementation of the Convention and share this best practice internationally. The Commission, along with other parts of the promotion and monitoring framework, should monitor implementation of the Action Plan.
- The Commission also believes the UK Government should play a more active role in UN studies, for example the current study of the Office of the High Commissioner for Human Rights on key legal measures for the ratification and effective implementation of the Convention on the Rights of Persons with Disabilities.

### 3. RATIFICATION

#### *Reservations and Interpretative Declarations*

3.1 The Commission wishes to see the Convention ratified by the UK government at the earliest opportunity.

3.2 The Australian Human Rights and Equality of Opportunity Commission deliberately brought forward ratification in order to secure a place on the first UN Expert Committee on CRPD. It is unfortunate that the UK has missed the opportunity for representation on the Committee at this important early stage.

3.3 The Commission acknowledges and welcomes the progress made to date by Government, and in particular the leadership of the Office for Disability Issues in deciding not to pursue a series of proposed reservations and interpretative declarations.

3.4 The Commission's Disability Committee does not believe reservations or interpretative declarations are a necessary for ratification. This belief has been re-affirmed in the light of several countries including New Zealand, Australia, Austria, Germany and France ratifying or planning to ratify without reservation. The Commission highlights these countries given their broadly similar social and economic position, legislative and public policy frameworks and pressures from sometimes conflicting stakeholders over matters such as education policy.

3.5 The Commission has proposed to the United Nations High Commissioner that it should consider carrying out a comparative analysis of the rationale underpinning the different approaches of States Parties to ratification and the use of reservations or interpretative declarations.

3.6 For example, like the UK Germany, France, Austria, New Zealand and Australia all have education policies which promote the progressive realisation of educational inclusion, whilst maintaining special schools as part of the general education system. However, whereas each of these countries has concluded that their legislation and approach is compatible with the framework provided by Article 24, the UK has not and wishes to enter both a reservation and an interpretative declaration. The UK does not appear to have taken into account the overwhelming conclusion of other Governments in coming to its position and the Commission suggests that the UK Government is allowing over cautiousness and a failure to acknowledge the emphasis on progressive realisation to damage its international standing.

3.7 The Commission believes the time has come to lift the exemption of the armed forces from the Disability Discrimination Act in the light of a positive change in attitudes towards equality and diversity in the military and this possibility has been raised with Ministers at the MOD. The previous Secretary of State for Defence Rt Hon Des Browne committed to asking officials to reconsider the position during his last meeting with the Commission and this is an area we are pursuing with the new Secretary of State Rt Hon John Hutton. Were the exemption lifted in the Single Equality Act, this would enable Government to revoke its proposed reservation relating to the employment provisions of the Convention in the next few years.

3.8 Whilst the Commission has not been appraised of the precise nature of the Home Office's proposals for reservations and interpretative declarations in relation to Article 18 of the Convention—Liberty of movement and nationality—the Commission is concerned that a reservation in relation to Article 18(1)<sup>42</sup> of the Convention may be incompatible with the principle of non-discrimination under article 5 of the Convention and the basic purposes of the present Convention (see Article 46 (1)).<sup>43</sup>

3.9 The Commission does not believe that Article 18 affects the right of Member States to regulate who and in what circumstances a person gains citizenship or the right to enter the United Kingdom. Rather it seeks to ensure that in exercising immigration functions, Member States do not discriminate against persons based on any disability. A reservation is therefore unnecessary. In addition, we note that in relation to the Convention on the Rights of the Child, the UK government recently announced that it will be withdrawing an equivalent reservation regarding immigration under article 22 of that Convention.<sup>44</sup> The Commission believes the government is acting inconsistently when it is going to withdraw an equivalent reservation under another UN Convention.

3.10 The Commission finds the lack of transparency and consultation by Government concerning proposed reservations and interpretative declarations deeply regrettable and out of keeping with the Convention's emphasis on disabled people's involvement at all levels as required by article 4(3) of the Convention. Whilst the Commission has been appraised of the general detail of other proposed reservations

<sup>42</sup> 1. States Parties shall recognize 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, including by ensuring that persons with disabilities:

- (a) have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- (b) are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- (c) are free to leave any country, including their own; and
- (d) are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

<sup>43</sup> 1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

<sup>44</sup> Department for Children, Schools and Families, Press Release, "UK Lifts Reservations on the UN Convention on the Rights of the Child", 22 September 2008:  
[http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn\\_id=2008\\_0209](http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0209)

and interpretative declarations the confidential nature of this information has had an extremely limiting effect upon the Commission's ability to act on it. This is also not consistent with developing our role as the national monitoring body. We cannot properly and fully fulfil our role in monitoring the implementation of the Convention if we are not provided with full details of the proposed reservations and interpretative declarations.

3.11 The Commission therefore proposes that the outcome of the Government's review of compatibility of domestic legislation, policies, practices and procedures, including proposed reservations and interpretative declarations, actions plans and plans for promotion is published for consultation prior to ratification.

3.12 Finally, we note that whilst the Commission's Disability Committee is opposed to reservations and interpretative declarations, it does not favour opposing indefinitely ratification on these grounds and wishes to see ratification at the earliest opportunity. A statement of the Committee's position is included in the Appendix.

### *The Optional Protocol*

3.13 The Commission believes the Optional Protocol to be an important dimension of the Convention and urges the Government to ratify it, especially in the light of the trial run with CEDAW. The Optional Protocol would allow individuals who allege that their rights under the Convention have been breached to petition the CRPD Committee and to ask the Committee to give its decision. As with all international treaty mechanisms any individual will have had to exhaust any domestic national processes before doing so (this rule usually results in the fact that the numbers taking up cases using international mechanisms remains small and that the domestic law is able to develop properly). This will usually mean using any complaints mechanisms and/or seeking redress in the courts. As the Convention will not become part of domestic law this will mean taking proceedings under any domestic laws that might create similar rights (including, of course, the Disability Discrimination Act).

Adopting the Optional Protocol is important because:

- for the rights under the Convention to be meaningful they need to be accompanied by a remedy;
- it is likely that however careful government and public sector is to ensure compliance they are unlikely to get it 100% right and where there are omissions individuals should be able seek redress;
- allowing cases to go to the Committee will ensure that any systemic or policy issues are highlighted;
- this will help the UK to be seen as an exemplar of good practice;
- actual real examples will illustrate to policy makers, NGOs and the wider public why the Convention is important;
- the opinions from the Committee will create greater understanding of how the Convention should be developed and interpreted and the UK is in a good place to help with this (the Committee will be able to praise examples of good practice as well as to help to develop further any inadequate policies);
- it will allow the domestic courts to start to take account of the Convention once the Committee starts being asked for its views of decisions from the UK courts; and
- it is difficult to see any arguments against granting this extra right to people with disabilities—after all if the government is confident that the UK laws and policies comply then there will be very few successful cases.

### *EU developments regarding the Convention*

3.14 Whilst the Commission recognises and respects the Government's desire to align with the European Union on ratification of the Convention, it is clear that doing so is now a primary cause of delay. We would wish to know what degree of tolerance the UK Government has for delaying ratification past its target of the "end of 2008" in order to work within the wider EU's timetable for conclusion.

3.15 In September 2008 the European Commission released its proposals for a Council Decision to conclude the Convention and the Optional Protocol.<sup>45</sup> We have not had an opportunity to consider in detail the implications of the proposals, particularly those where there is an overlap between the competences of the EU and Member States.

3.16 However we wish to point out several important developments in the proposals. Firstly, in relation to the ratification of the Convention the proposal contains a reservation concerning article 27.1 of the Convention and employment of disabled persons in the armed forces. The reservation is proposed in light of the exception under article 3(4) of the Employment Directive 2000/78/EC which provides Member States with the discretion to legislate such that the Directive does not apply to employment of disabled persons in the armed services. For the reasons stated above (3.7), we do not believe that the exception relating to the

<sup>45</sup> COM(2008) 530/final/2.

armed forces is appropriate any longer, at least in relation to combat forces. We will consider making submissions to the European Commission on removing or amending the article 3(4) exception when the Directive is next reviewed in 2010. In any event, as article 3(4) is in any event permissive and not obligatory, we do not believe that a reservation by the UK government to the Convention is necessary.

3.17 Secondly we are pleased that the European Commission has proposed to adopt the Optional Protocol, as previously it indicated that it would not. The UK government should follow the example of the European Commission and adopt the Optional Protocol.

#### 4. NATIONAL IMPLEMENTATION AND MONITORING—THE GOVERNMENT’S ROLE

4.1 The Commission is pleased that the Office of Disability Issues (ODI) will be the primary focal point and coordination mechanism, as required by Article 33 of the Convention.

4.2 Whilst disability is relatively well-established as an issue of equality and human rights in the UK, it is still important that the location of the focal point and coordination mechanism in Government aids rather than challenges the paradigm shift from a health or social welfare perspective to one of human rights and equality. Currently the ODI is housed within the Department for Work and Pensions. Whilst it may not be desirable or practicable to change this arrangement in the immediate term, a statement of independence of DWP, especially in respect of work connected with the Convention, would be desirable.

4.3 The Commission is concerned to ensure that robust focal points and coordination mechanisms are established in the devolved administration. This is especially important given the increasingly distinct political and policy frameworks in each country of Britain and the UK.

4.4 The Commission believes the ODI should, working with Government departments, devolved administrations, disabled people’s organisations and others, produce an action plan for implementation of the Convention. The duties on Secretaries of State to produce reports outlining progress on disability equality in their policy sectors and to detail the action they propose to take to deal with barriers or lack of progress provide an ideal opportunity to kick-start this process in December 2008, as does the development by the Office of Disability Issues of a “road-map” towards delivery of the Government’s goal of equality for disabled people by 2025. The Commission is particularly pleased to note the Department for International Development’s proactive approach to the Convention.

4.5 In delivering our responsibilities under Article 33, the Commission and other “independent mechanisms” along with disabled people’s organisations should promote and monitor implementation of the Action Plan as well as the Convention generally.

4.6 The Commission’s work on the Disability Discrimination Act Secretary of State duties has revealed widespread gaps in statistics and data concerning disability. The Commission welcomes the ODI’s efforts, in partnership with Government Departments to plug this gap, which will be essential for the effective implementation of the Convention, especially Article 31.

#### 5. NATIONAL IMPLEMENTATION AND MONITORING—FRAMEWORK FOR PROMOTING, PROTECTING AND MONITORING IMPLEMENTATION OF THE CONVENTION

5.1 The Commission is pleased to be designated by Government as an independent mechanism alongside the Scottish Human Rights Commission, Northern Ireland Human Rights Commission and Northern Ireland Equalities Commission.

5.2 The Commission takes this responsibility seriously. The Commission’s Disability Committee agreed the Commission’s broad approach to this task at its meeting in September (attached in the appendix).

5.3 The Commission is particularly mindful of its obligation to collaborate with disabled people and their organisations in executing its role. The Commission’s Disability Committee will play a leading role in this respect, including in relation to capacity building.

5.4 The Government should be able to point to the Commission as evidence of its implementation of the Convention, but doing so requires that Government respects the Commission’s statutory independence and the difference between the Commission’s role and responsibilities and its own. Whilst the Commission will from time to time work closely with Government on shared objectives relating to the Convention, a clarity must be maintained about those responsibilities which are the Commission’s and those which are Government’s.

#### 6. NATIONAL IMPLEMENTATION AND MONITORING—ENGAGING CIVIL SOCIETY AND DISABLED PEOPLE’S ORGANISATIONS

6.1 The Commission has already expressed its disappointment at the lack of consultation with disabled people and their organisations concerning proposed reservations and interpretative declarations. This is fundamentally at odds with the ethos of the Convention itself and the expressed objective of the UK Government to pioneer new approaches to involving disabled people in policy making.

6.2 The Commission expects the Government, in delivering its responsibilities under Article 33(3) to carry out specific work to build the capacity of disabled people's organisations to participate fully in the monitoring process. The Commission will also explore options for supporting and building the capacity of disabled people's organisations.

6.3 The Commission also expect the Government to lead on promoting awareness amongst disabled people of the Convention.

## APPENDIX 1

### POSITION STATEMENT BY THE EQUALITY AND HUMAN RIGHTS COMMISSION'S (EHRC) DISABILITY COMMITTEE CONCERNING THE UK'S RATIFICATION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES

The EHRC Disability Committee considers the United Nations Convention On The Rights Of People with Disabilities to be a critically important contribution towards the equal treatment and human rights of disabled people across the world.

The Disability Committee believes that the Convention incorporates many of the aspirations, commitments and tangible actions required to deliver disability equality and human rights in the United Kingdom. The Committee is therefore of the view that the UK Government should ratify the Convention at the earliest possible opportunity. We urge the Government to ratify the Convention by the close of 2008, in line with the ambition to do so set out by Minister for Disabled People, Anne McGuire MP.

The Convention is only likely to make a real difference if its implementation is actively monitored and pursued.

The Convention is unique in requiring Governments to designate one or more "independent mechanisms" as part of a framework to promote, protect and monitor its implementation. The EHRC has been approached to be a part of this framework in Britain. We are honoured and enthusiastic to accept this undertaking.

The active participation of disabled people and their organisations, both independently and in collaboration with the Commission, will be critical to making the Convention a success. The Commission is committed to working with disabled people and will over the coming year explore with disability stakeholders how we can work together most effectively.

The Disability Committee is aware that a number of government departments have declared that they have concerns about particular elements of the convention and wish to express either "reservations" or "interpretative declarations" in relation to particular articles.

The Disability Committee is of the opinion that neither "reservations" nor "interpretative declarations" are necessary prerequisites for ratifying the Convention. The Committee will therefore be working with the Government to ensure, as far as they are able, that the current proposed reservations or interpretive declarations are withdrawn.

The possibility cannot be ruled out however, that the Government will reach the target date for ratification at the end of 2008, and remain insistent on some reservations and interpretive declarations. In this situation, the Disability Committee position is that early ratification should take precedence over a small number of reservations and interpretive declarations, providing that explicit plans can be put in place to regularly review them and to withdraw them if it can be shown they are no longer necessary or relevant.

Should the Government ratify with reservations, the Disability Committee will formally request from Government written justification and a plan of action concerning how Departments intend to address the issues underlying the reservations or interpretive declarations.

## APPENDIX 2

### EQUALITY AND HUMAN RIGHTS COMMISSION

#### Disability Committee—10 September 2008

Title: Equality and Human Rights Commission's approach to promoting and monitoring implementation of the UN Convention on the Rights of Persons with Disabilities in Britain and the UK

Author: Neil Crowther

Purpose: To set out proposals for discussion and agreement by the Disability Committee

## 1. BACKGROUND

1.1 The Convention on the Rights of Persons with Disabilities (“CRPD”) was opened for signature on 30 March 2007 and has already been signed by over 100 States.

1.2 The Minister for Disabled People, Anne McGuire, has signaled her desire for the UK to ratify the Convention by the close of 2008.

1.3 In order to ratify, “States Parties” are required to satisfy Article 33 of the Convention:

### Article 33—National implementation and monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

1.4 This is much more specific than the general obligations clauses contained in previous human rights instruments, which require States to use “all appropriate means, including particularly the adoption of legislative measures” (ICESCR) or to “to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant” (ICCPR). The CRPD goes further than previous human rights instruments in reflecting the truth of the important observation made (by Rene Cassin) during the drafting of the Covenants, that

“it would be deceiving the peoples of the world to let them think that a legal provision was all that was required . . . when in fact an entire social structure had to be transformed”.

1.5 The EHRC has accepted the Office of Disability Issues proposal that it become an “independent mechanism” in relation to the Convention.

1.6 In the UK, this role will be shared with the Scottish Human Rights Commission, Northern Ireland Human Rights Commission and Northern Ireland Equality Commission. It will be important to co-ordinate activity between the Commissions, and other bodies such as the Children’s Commissioners.

1.7 The Office of Disability Issues will provide both a focal point and co-ordination mechanism within Government. Focal points in the Scottish and Welsh Governments would be beneficial.

1.8 In undertaking the role of independent mechanism it is critical that the Commission takes account of and seek to ensure Government takes account of Article 4.3 of the CPRD:

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organization.

1.9 The Australian Human Rights and Equal Opportunities Commission has produced helpful advice for National Human Rights Institutions (NHRI’s) concerning the practical implications of acting as an independent mechanism to “promote, protect and monitor” implementation of the Convention:

### *Promotion*

Promotion of implementation is not identical with promotion of public awareness and acceptance of rights of people with disability, obligations on which are set out in Article 8 and regarding which NHRIs will also clearly have a role (although as with other aspects of the Convention it is recommended that this role not be seen as one solely for an NHRI).

Promotion of implementation involves a strategic rather than a purely informational role—although clearly necessary strategies would include identification of, and achieving measures to address, information needs in achieving implementation (for example, information needs for employers or education providers in making reasonable adjustments, or information needs for consumers with disability in seeking to purchase accessible products).

Determining approaches to promotion of implementation appears to require:

- Detailed analysis of each of the obligations set out in the Convention by reference to each of the rights recognised.
- Consideration in national circumstances of implementation methods and tools available to government and other agencies with potential roles in implementation.
- Determination of strategies for promoting action by these agencies.



In some contexts promotion of implementation could involve:

- Governments requiring regulatory agencies responsible for particular areas to incorporate measures into their regulatory regimes (or improve existing measures within those regimes) to achieve or move towards compliance with the CRPD (for example, inclusion of disability access requirements in regulatory regimes for buildings, transport, information and communications technology, consumer electronics, etc); or
- NHRIs persuading relevant regulators to take such measures; and
- NHRIs negotiating agreed strategies for action by other agencies or organisations over a period of time—including through NHRIs using, and/or agreeing not to use, enforcement powers where available to them.

#### *Monitoring*

Clearly, there are strong connections between promotion of implementation and issues of monitoring, reporting and data collection—it is not possible to know whether we are succeeding in promotion of implementation unless we know where we are starting from and where we have got to.

NHRIs acting alone are likely to lack the resources and capacity to undertake comprehensive monitoring of current and future levels of compliance with the CRPD. While monitoring by NHRIs can be expected to make an important contribution to effective and accountable implementation it may likewise be important for NHRIs to make clear to their governments and civil society organisations that monitoring by NHRIs (in particular, within their existing resources and capacities) should not be seen as sufficient fulfilment of the requirements of article 33, but rather as indicated by article 33 should be approached as part of a broader framework.

It may again be useful to emphasise that monitoring in the context of the CRPD does not involve only monitoring of (hopefully rare) incidents of breaches which can be approached as exceptional cases. While, clearly, national circumstances vary widely on some issues covered by the CRPD it should be equally clear—including from the input of disability representatives worldwide during the drafting process—that in all States the starting position is that major social structures really do have to be transformed—physical and communications environments, education and employment, housing and accommodation and so on—and that monitoring these processes will also involve major tasks.

NHRIs currently will have different areas and levels of capacity and experience in monitoring relevant to various areas covered by the CRPD.

Some for example may have more experience in monitoring human rights in institutional settings such as prisons which may be transferable to monitoring human rights in relation to institutional settings relevant to the CRPD, as well as being applicable to monitoring human rights of people with disability themselves in the criminal justice system. Other NHRIs whose jurisdiction and experience has been based on narrower models of anti discrimination law may have less experience and capability in this respect.

Similarly, some may have had more detailed involvement in issues of physical or communications access to date than others; and so on.

Some NHRIs may have experience with development and application of human rights indicators and of the conduct of human rights audits which could be usefully applied to monitoring of implementation of the CRPD, and shared with other NHRIs whose experience is more concentrated in investigation and resolution of individual complaints and/or litigation based enforcement.

However broad the range of experience and capability of NHRIs may be, taking into account the range of issues covered by the Convention it appears likely to be most effective to approach monitoring, as Article 33 does, as being performed through a framework which includes NHRIs as well as other relevant agencies and mechanisms, rather than through a NHRI being seen as solely responsible.

Participation in, or initiation of, discussions with governments, with agencies with relevant responsibilities, and with disability representative organisations on the most effective roles for different organisations within a framework appears to be an early task for NHRIs to undertake.

#### *Protection*

The same point made above in relation to promotion and monitoring—that NHRIs have important roles as part of a framework for implementation of the CRPD rather than being appropriately assigned sole responsibility—applies even more obviously regarding measures for protection of rights.

Many of the civil and political rights restated or expanded upon in the CRPD will in all States be covered by legislation which is primarily the responsibility of mechanisms beyond NHRIs—in areas such as criminal law, guardianship, family law etc. NHRIs may however have an important role as part of a national framework (or, to the extent possible within their existing resources and jurisdiction, on their own initiative) in examining needs and possibilities for any additional

measures in these areas—such as the development of guidelines and strategies (whether by NHRIs or by the agencies responsible, or both) regarding disability issues in law enforcement and the administration of justice.

Regarding economic social and cultural rights, the CRPD acknowledges (Article 4.2) that this class of rights may be subject to progressive implementation, rather than being required to be immediately realised in full. This has led to perceptions that economic social and cultural rights are not classed as real rights and in particular are not capable of being justiciable.

Although many NHRIs may not currently have direct or comprehensive jurisdiction in relation to the Covenant on Economic Social and Cultural Rights they may nonetheless have important contributions to make to realisation of these rights, and to consideration by governments of measures for protection of these rights:

In particular, many NHRIs do already exercise jurisdiction in relation to economic social and cultural rights through administering anti-discrimination laws applying to these rights and thus are familiar with issues of rights which are justiciable and yet are subject to progressive implementation (for example the requirements for accessibility of public transport which exist in several States and which include timelines for compliance).

Discrimination laws in some States draw a distinction between a right to have non-discriminatory access to those services and facilities which exist (recognised in law), and a right of access to needed services and facilities (not recognised). In other States however legislation appears to go further towards recognising rights to needed services, supports and adjustments more directly. Exchange of experience between NHRIs in this area would appear particularly valuable.

## 2. PROPOSED EHRC APPROACH AND ACTIONS

The Commission will take a proactive approach to promoting and monitoring implementation of CRDP, both through mainstreamed and dedicated activities.

### 2.1 *Ratification*

The EHRC Disability Committee has issued a statement of its position on the UK Government's ratification of CRPD and the actions it will pursue. This is included in the Appendix.

### 2.2 *Involving and engaging disabled people*

The Commission will directly involve as well as engage with disabled people's organisations in its work on the Convention. This includes:

- Setting up an advisory group.
- Calling for evidence in relation to monitoring implementation and consulting on draft submissions.
- Providing opportunities for disabled peoples organisations to work with the Commission and independently on the Convention via its grants programme.
- Engaging and involving disabled people in relation to specific work-streams.

### 2.3 *Co-ordination with and supporting development of the UK's promotion and monitoring framework*

The Commission will set up a co-ordination group, initially involving lead officers from EHRC's England, Scotland and Wales offices, the Scottish Human Rights Commission, the Northern Ireland Human Rights Commission and the Northern Ireland Equality Commission. Subject to agreement by the Commissions, this group may be widened to include Equality 2025 and other relevant bodies such as the Children's Commissioners.

The group will be tasked with developing and agreeing a consistent UK wide approach to promoting and monitoring implementation of the Convention taking account of devolved and reserved matters and different organisational competencies.

### 2.4 *Awareness raising*

The Commission will seek to raise awareness and promote understanding of the Convention including:

- Through its digital communications strategy including dedicated pages on the Commissions website, through its e-bulletin and its presence on social networking sites including Facebook.
- Specific action to promote awareness and understanding of rights amongst people with learning disabilities and amongst children and young people.

- 
- Through third party organisations to target information at “hard to reach” groups such as disabled people living in institutions, in ethnic minority and traveller communities.

### *2.5 Defining the Commissions actions to promote, protect and monitor implementation of CRPD in the 2009–12 Strategy and business plan*

During 2008–09 the Commission will draft, consult on and agree its strategy for the period 2009–12. Subsequent business plans will focus on achievement of the three year strategy. These will incorporate activities in relation to the Commission’s role as part of the CRPD promotion and monitoring framework and may include:

- Influencing activities to secure a single equality Act which builds on the DDA and the production and dissemination of guidance to those with rights and responsibilities under the new Act including disabled people, including via the Commission’s website and Helpline.
- Pursuing a new EU Directive on Goods, Facilities and Services.
- Integrating the Convention into the Commission’s Legal Strategy, including enforcement of the Disability Equality Duty, investigation and inquiries, judicial review and intervention, casework and litigation, through legal policy work and capacity building via the Commissions Grants Programme.
- Research, policy development and influencing activities in relation to key areas including poverty, employment, independent living, health inequalities, targeted violence and abuse, criminal justice, education, access to goods and services and in relation to democratic participation and voice.
- The promotion of human rights generally, following the Commission’s Human Rights Inquiry.

The Commission will produce a report detailing precisely how its 3 year strategy and plans aim to support implementation of relevant Convention Articles.

### *2.6 Monitoring*

Working collaboratively with other parts of the monitoring framework, the Commission will:

- Through its work on data gathering and the development of an equalities measurement framework, seek to improve the quality, depth and consistency of data on equalities and human rights as it relates to disabled people.
- Publish a baseline assessment of Britain and the United Kingdom’s performance against the Convention articles within 18 months of the UK’s ratification, ahead of the official timetable for reporting.
- Seek to influence the UK Government’s report to the United Nation’s Committee, and that of the European Union.
- Submit and present its own report to the UN Committee.
- Adapt its own strategy and work-plans to respond to the findings and recommendations of the Committee.

### *2.7 International co-operation*

Article 32 of the CPRD recognises the importance of international co-operation and calls for States to undertake appropriate measures:

Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices.

Facilitating cooperation in research and access to scientific and technical knowledge.

In the immediate term it is proposed that the Commission develops informal relationships with NHRI’s in similarly placed country’s including Australia, Canada and across the European Union.

The Commission may in time wish to partner one or more NHRI’s and/or NGO’s in Country’s with less well developed legislation, policy and programmes.

### Memorandum submitted by the Alliance for Inclusive Education

Alliance for Inclusive Education is national information sharing and campaigning network, led by disabled people with parents, teachers and educationalists as allies. We are the only organisation, controlled by disabled people, that focuses on campaigning and policy development work on education issues. We see our role as bringing together all the “stakeholders” under the leadership of disabled people, to challenge, inform, and campaign for “social justice” and equality for all these disadvantaged and marginalised children and young people.

Since 1990 the Alliance has campaigned for the right of all disabled learners to be included in mainstream education. The Alliance was part of the lobby that campaigned for SEN legislation that removed many of the barriers to inclusion and it is through the Special Educational Needs and Disability Act 2001 that the vast majority of disabled learners are now being educated in their local mainstream education setting alongside their friends and peers.

We approach all our work from the social model of disability. The social model of disability is a fundamental principle of the duty to promote disability equality.

#### INCLUSIVE EDUCATION IS A HUMAN RIGHTS ISSUE

ALLFIE’s core principle is that inclusive education like health and social care, freedom of liberty amongst others are all equally human rights which must be upheld and protected by Government.

Inclusive Education is the cornerstone for developing an inclusive community where disabled and non disabled people play, learn, work and grow up together. An inclusive community fosters mutual respect and upholding of each other’s dignity and humanity as these young people articulate:

“Inclusion for me is about a society, which respects the humanity of its people.” (Disabled young person, Nottinghamshire)

“I don’t think there should be special schools because all children must be together, and if we are separated, we can’t possibly know what different people in society are like. I feel no one can live isolated from others. This is terribly painful and extremely unfair. Most of the people are different and have some problem. If they could be classified and separated, they would be assigned to different places. What kind of society would this be?” Juan Cobeñas, 2 August 2006

The Government has already demonstrated it’s commitment to the equality of disabled people in its 2005 “Improving the Life Chances of Disabled People” report. The report sets out an ambitious target of securing equality for disabled people by 2025. Setting an end date demonstrates the Government’s understanding that a great deal of work need to be done with regard to the removal of existing barriers to disabled people’s equality. It also indicates the understanding that there is a need to work towards the progressive realisation of disabled people’s human rights and a move towards an inclusive society where inequalities between disabled and non disabled people will be eradicated.

This commitment was demonstrated further by the UK Government being one of the first to sign the new UN Convention for Persons with Disabilities (UNCRPD) in March 2007.

ALLFIE is deeply disappointed, therefore, that the Department for Children, Schools and Families (DCSF) remains unmoved in its plan to place a reservation and interpretative declaration against Article 24. It is our view that taking such a decision is clearly out of step with the views and aspirations by society for disabled learners.

Tara Flood, ALLFIE’s Director attended the UN Adhoc Committee meetings in New York, so is acutely aware of the positive impact, globally, of a human rights treaty that recognising the particular experience of the 600 million disabled people across the world.

#### UK GOVERNMENT AND ARTICLE 24

ALLFIE is fully aware that it would be unrealistic to expect an education system that would be inclusive and welcoming of ALL learners immediately, but given that over forty countries have now ratified the UNCRPD without placing reservations or interpretative declarations against Article 24, ALLFIE can rightfully assume that those countries also believe that an inclusive education system can be achieved over a period of time. Those states parties who have ratified the UNCRPD have clearly taken into account that it will take time to redesign education related legislation, policies, and services to ensure that inclusive education is both achievable and sustainable for ALL disabled learners.

That is why the UNCRPD has to be aspirational in nature because its aim is to create a “paradigm shift” in the way the world views disabled people. This is particularly relevant to social economic and cultural rights, which includes education. Article 4 (General Obligations) Clause (2) allows time for states parties to plan and implement economic social and cultural rights (including inclusive education rights) over a given period of time so that the states party can work towards full compliance with the UNCRD.

ALLFIE recognises, in particular the importance of Article 24 (Education) in the UNCRPD and in particular the impact that such forward thinking text will have on the access to education for disabled learners. Currently this is a right that is seldom respected—less than 2% of disabled children in the majority world have access to education.

As we have already highlighted, the UK Government has experience of working in this way. Other examples where the UK Government has worked toward rights for disabled people over a period of time is the 1995 and 2005 Disability Discrimination Act and 2001 Special Educational Needs and Disability Act. The Government's "Building Schools and Colleges for the Future" programme is support schools and colleges to improve the physical environment which, in theory, will increase access for disabled learners and ultimately play a part in reducing existing educational inequality. The 2005 DDA has, over a period of time, created new obligations on education settings (schools, FE and HE institutions) to promote disability equality through the production of Disability Equality Schemes.

Article 24, of the UNCRPD, will create a positive benchmark for guiding the direction of future education policy and legislation which will affect disabled and non disabled students alike and ALLFIE believes that this is something that the UK Government should embrace as an opportunity to progress their commitment to delivering equality by 2025. As increasingly numbers of students are or would like to access Further and Higher Education and other informal education courses we would like such education providers embrace the commitment of including disabled students in their local provision.

ALLFIE also recognises the extraordinary journey that member Government representatives and NGO representatives took during the debates around Article 24. The legitimate concerns raised about the practical implications for delivering an inclusive education system did not go unheard. However such protracted debates resulted in a consensus that inclusive education was the best way in which disabled people could achieve equality, citizenship and be fully recognised as valued human beings.

ALLFIE's publications "Snapshots of Possibilities" and "Where Are They Are Now" both contain many practical illustrations of how disabled young people can be included in mainstream education.

OFSTED in their 2006 "Inclusion—Does It Matter Where Pupils Are Taught?" report highlighted that more good and outstanding provision was found in resourced mainstream schools than anywhere else. Newham and Nottingham have been working towards providing supported mainstream education across all its educational provision. OFSTED also concluded that effectively supporting disabled people's learning is not dependent on specialist provision rather ethos of the school.

Also in 2006 the DCSF published a ground breaking resource for schools to assist with finding solutions to including disabled learners. The "Implementing the DDA in Schools and Early Years Setting" pack was based on interviews with 40 mainstream schools and a number of key factors for successful inclusion included:

- Vision and values based on an inclusive ethos.
- A "can do" attitude from all staff.
- A Pro-active approach to identifying barriers and finding practical solutions.
- A strong collaborative relationships with parents and pupils.
- A meaningful voice for disabled pupils.
- A positive approach to managing behaviour.
- Strong Leadership by senior management and governors.
- Effective staff training and development.

ALLFIE believes that all disabled learners will benefit from such positive and profound experience that comes with learning alongside their nondisabled peers. ALLFIE is convinced that Article 24 is key to supporting this realization.

"Inclusive education is a much more profound and deeper challenge to our schooling system and the way we think about learning. The starting principle is that each and every learner, irrespective of the nature or degree of their impairment should have the right to belong to their local school and their local community, with meaningful and appropriate support, enabling each learner to participate and contribute to such a learning community." (Inclusion campaigner and ally, Bolton)

ALLFIE is a member of the UN Convention Campaign Coalition which is currently advising the Joint Committee on Human Rights that the UN Convention should be ratified without any reservations and interpretative directives and ALLFIE would support this position. The Government will not be upholding the spirit of the Convention if ratification of the whole Convention does not happen as soon as possible.

ALLFIE have written to Ed Balls (Secretary of State for DCSF) in September asking for a meeting to discuss the ratification of UN Convention for People with Disabilities without any reservations to Article 24. We hope that the Joint Committee on Human Rights will advise on the ratification of the whole convention which will ensure disabled peoples human rights are universally protected regardless where they live.

31 October 2008

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#### **Memorandum submitted by Disability Equality in Education**

1. Disability Equality in Education is a charity and the lead provider of training for inclusive education and disability equality to the education system in the UK. Richard Rieser our Director also represented the UK Disabled Peoples Council at the Ad Hoc Committee in New York and is the Representative on the European Disability Forum.

2. Following the publishing of a statement on the Convention by Minister for Disabled People, Ann McGuire, on the 6 May, which indicated that the DCSF were going to reserve on Article 24 and also place an interpretive declaration on Article 24 on Education the Council for Disabled Children has been keen to meet with representatives of the DCSF. The DCSF proposals run counter to our Inclusion Policy adopted by the CDC and the Special Education Consortium. (See Appendix 2)

3. Article 24 Education was much discussed in the Ad Hoc Committee in New York which drafted the convention. In expressing reservations to the new Disability Convention which would have the effect of retaining separate special schools for some disabled children permanently in UK, DCSF is struggling with doubts similar to those debated and resolved between countries round the world when the Convention was eventually agreed at the UN in 2006 after years of negotiations.

4. The doubts at the UN took two main forms: doubts about whether it was necessary for some children to be separated on a full-time basis in order to receive an effective education and doubts about the current capacity of education systems to fulfill obligations required by the Convention.

5. During the negotiations countries who questioned whether effective education for all was possible without separate, special schools, especially for students who are blind and/or deaf, were urged to consider the extent of successful inclusive practice already existing. Case studies of inclusion working were based on accommodation, support and flexible groupings for individual needs in mainstream settings.

6. Text in earlier drafts of the Convention which would have given a choice of special education in separate settings was removed and so were words which envisaged alternatives in case of inadequacy of mainstream settings. Discussions and debate on Article 24 continued until the final days of negotiations when agreement was finally reached on a goal of inclusive education.

7. The UK Government played a leading role in these discussions with frequent communication with the relevant Departments in the UK. Liz Tillet, who was leading the negotiations for the UK, stated that the final wording of Article 24 had the approval of the then Department for Education and Skills.

8. It was felt that the General Education System in the UK was inclusive and fitted in with the wording of the Convention. There were three major debates at the Ad Hoc Committee on the question of choice and inclusion. Each time the argument for inclusion as the norm was won in order to accord with the principles of the Convention and the human rights of disabled people. The Principles of the Convention are contained in the preamble, Article 1 the Purpose and Article 3. General Principles these include:

“Full and effective participation and inclusion in society” (3c).

“Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity” (3d).

Equality of opportunity (3e) and “Accessibility” (3f).

Inclusion is viewed as a fundamental freedom in the Convention.

9. The DCSF has 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 and interpretive declaration”. This statement misses an important point.

10. The CRPD provides aspirations in the area of social, economic and cultural rights that state parties will work towards. Article 4.2 makes this very clear. The full realization of these rights, including Article 24, are to be achieved “progressively”. This provision recognises that existing practices and structures do not fulfill the principles of the Convention and lead to discrimination, prejudice and unequal life chances for disabled people. This clause allows state parties time to plan, to change the built environment, to build capacity and to challenge and change negative attitudes and practices. The Duty to Promote Disability Equality is a good example of this in UK schools. All state schools are all expected, through a series of three year Disability Equality Schemes, to eradicate discrimination and harassment towards disabled people and

promote positive attitudes, equality and opportunities to be involved in public life for disabled people. The Government and DCSF could adopt of a position similar to that which the Government adopted in the Life Chances Report (2005).

“By 2025, disabled people in Britain should have full opportunities and choices to improve their quality of life, and will be respected and included as equal members of society.”

11. Then, if an interpretive declaration on Article 24 is seen as needed, it should incorporate this sentiment. There does not seem to be any need for this as the concept of progressive realization applies to Article 24-Education. Therefore there is no need for this interpretive declaration as the general education system and the statutes that cover it have a pre-disposition to inclusive education which will develop over time eg The 2001 SEN and Disability Act.

12. However, if DCSF still feels the need for an interpretive declaration then this should read as follows:

“UK Government is committed to developing an inclusive education system where mainstream primary and secondary schools and staff will have the capacity to effectively educate the full range of disabled children. Currently the education system must be taken to mean mainstream and special schools with some children whose needs are met by specialist provision being met some way from their home. We aim through improving capacity that by 2025 that all will be able to have their needs met in local mainstream provision.”

13. This formulation is progressive, whereas the current suggestion of an interpretive declaration from DCSF does not contain a recognition of progression and would maintain and increase the educational disadvantage disabled pupils experience in the education system and the consequent impact on their loss of life chances in their transition to adult life.

14. If the time scale “2025” causes an insurmountable problem “so that over time” could be substituted.

15. The DCSF have also stated that there will also be a need to have a reservation to Article 24 “in respect of disabled children whose needs are best met through specialist provision, which may be some way from their home”. The arguments stated above apply equally here. Just because this is how specialist provision is provided now is not a reason to have a reservation given the concept of progressive realization.

16. OFSTED (2006)<sup>46</sup> examining the best provision for the range of disabled children found that resourced mainstream school provided the best specialist provision for disabled pupils. The DfES pack “Implementing the Disability Discrimination Act in Schools and Early Years” (2006)<sup>47</sup> based on over 300 interviews in 41 schools, identifies key factors in the development of inclusive provision that met the full range of needs of disabled children. These were:

- a vision and values based on an inclusive ethos;
- a “can do” attitude from all staff;
- a pro-active approach to identifying barriers and finding practical solutions;
- strong collaborative relationships with pupils and parents;
- a meaningful voice for pupils;
- a positive approach to managing behaviour;
- strong leadership by senior management and governors;
- effective staff training and development;
- the use of expertise from outside the school;
- building disability into resourcing arrangements;
- a sensitive approach to meeting the impairment specific needs of pupils;
- regular critical review and evaluation; and
- the availability of role models and positive images of disability.

17. This list demonstrates that developing schools to accommodate a widening diversity of disabled pupils is not fundamentally about developing specialist provision, but is about developing whole school policies, practices and procedures which tackle the barriers that have traditionally discriminated against disabled pupils.

18. The “social model” of disability, which the Government has adopted as a paradigm in the Life Chances Report, in the 2005 Disability Amendment Act and is at the core of the UN Convention, requires a dynamic rethink of existing concepts of special education. Geographically discrete specialist provision to which disabled children are allocated, based on their type of impairment, does not fit with the paradigm shift

<sup>46</sup> OFSTED (2006) *Inclusion: Does it matter where pupils are taught 2006–17* OFSTED, London <http://www.ofsted.gov.uk/portal/site/Internet/menuitem.e11147abaed5f711828a0d8308c08a0c/?jsessionid=LrnlBPJJx3v8rQ9FhvM0>

<sup>47</sup> DfES (2006) *Implementing the Disability Discrimination Act in Schools and Early Years* DfES, London and The Stationary Office for Shorter Version

identified in the Convention. While these are currently available as a choice for parents there is considerable evidence that such a “choice” is often made because of the inadequacies of the mainstream rather than a wish for specialist provision. Many parents have identified themselves as refugees from the mainstream.

19. Then Convention requires reasonable accommodations for disabled people in all mainstream services and Article 24 requires appropriate individual support for the individual disabled person to be successful.

20. The phrase “some way from their home” may contradict Article 19 when applied to residential special schools, which states that “people with disabilities should have the opportunity to choose their place of residence”... and “are not obliged to live in particular living arrangements”. In 19 b) goes on to emphasise that providing the necessary support for living and inclusion in the community and to prevent isolation or segregation from the community. A number of Local Authorities have systematically reduced their reliance on this type of provision over the last 30 years eg Oxfordshire, Newham, Barnsley and Wakefield and that there is no reason why others could not be encouraged to follow their example.

21. Article 23 on Family Life, paragraphs 3, 4 and 5 could well be breached by the insistence on best meeting disabled children’s special needs some way from their home. This will be particularly the case if the primary reason for the separation of a disabled child from their family is their disability.

“3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.”

22. The reservation the DCSF are considering could be considered as running counter to the principles of the Convention. Article 46 states.

“Reservations incompatible with the objects and purpose of the present Convention shall not be permitted.”

The development of more inclusive approaches to disabled children and young people and their education over time requires progressive realisation and will not be served by a reservation such as proposed by DCSF.

23. Some of the issues touched upon here are complex, but the suggestions offered here seek to help DCSF plot a course which will enhance the human rights of disabled children.

24. Forty-one countries have ratified and none of these including Australia, New Zealand, South Africa, India, China, Brazil, Spain have found it necessary to put forward a reservation or interpretive declaration on Article 24. The job at hand is to convince the UK Government to get into the spirit of the paradigm shift and progressive changes needed to give disabled people full equality which has to include effective inclusive education.

2 November 2008

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### **Memorandum submitted by the UN Convention Campaign Coalition**

Evidence to the Joint Committee on Human Rights on the Government’s approach to ratification of the UN Convention on the Rights of Persons with Disability.

The UN Convention Campaign Coalition was formed after a meeting in December 2007, called by the Office on Disability Issues, to discuss the Convention on Disability Rights. It became clear that, although Anne McGuire [Minister for Disabled People] was hoping that the UK would ratify the Convention by December 2008, support for such goals was not yet shared across Whitehall and that reservations would be tabled. This was a surprise to those of us present at the meeting because until that date 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.

Twenty-five organisations<sup>48</sup> joined the campaign coalition (UNCCC) the aim of which is to ensure that the UK Government ratifies the Convention on the Rights of Persons with Disabilities (CRPD) without reservation.

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<sup>48</sup> DAA, UK Disabled People’s Council, Inclusion Scotland, NCIL, Alliance for Inclusive Education, Disability Equality in Education, Scope, RADAR, SIA, CSIE, Challenging Perspectives, National Federation of the Blind, Equalities National Council, APDA, LC Disability, Centre on Human Rights for Disabled People(NI), Disability Action Northern Ireland, Capability Scotland, GADCIL, Preston Disc, ADD, Group of Solicitors with Disability, IDEA, Treehouse. EqualAbility.



Our main reasons for taking this position are:

- By ratifying the convention on the Rights of Disabled People with reservations the UK government would be declaring its willingness to accept less than the agreed international standard for the protection of the human rights of disabled people in the UK. If the UK enters a reservation to one or more parts of the Convention, the Convention protecting the human rights of disabled people will not apply in its entirety to the UK.
- 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.
- The government may argue that they can withdraw reservations when they are ready to do so. In fact this either does not happen or takes decades—as in the recent withdrawal of a reservation within the Convention on the Rights of the Child.
- Reserving on any part of the Convention is not compatible with the commitment of the UK Government to disability equality by the year 2025 or any of their commitments to human rights for all their citizens. Nor is it compatible with Article 46 regarding reservations.
- 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.
- 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 we cannot say that we will only support certain rights and not others.

In Anne McGuire's speech of 6 May 2008 in which she responded to your committee's request for a speedy ratification of the Convention, she outlined the areas in which reservations were likely: the armed forces, education, immigration, mental capacity, mental health, habitation and cultural services. What was clear from this list is that the Government was not prepared to fulfil Article 4, General Obligation 1b, and "take all appropriate measures, including legislation to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities."

Rather they are only prepared to reserve or table interpretative declarations in the very areas that will demand actions.

The armed forces have already publicly acknowledged that the only problem they have with the Convention—as with the DDA—is that they should not be obliged to recruit disabled people. They are already retaining service men and women who become disabled when on active service. However, neither the DDA or the Convention requires 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. Nobody would believe a war zone to be a reasonable environment for a blind or deaf person (for instance).

The Education article 24, was debated long and hard in New York. Many countries were unused to the concept of inclusion in education, particularly for deaf, deaf-blind and blind children. However, the final agreed draft, based on the concept of inclusion rather than choice, was agreed by the then Department for Education and Skills. Inclusion is viewed as a fundamental freedom in the Convention. That present education practices in the UK do not absolutely (though nearly ) conform to the Convention does not require reservation as the full realisation of rights, including those in Article 24, are to be achieved progressively. As does the achievement of the DDA Duty to Promote Disability Equality in UK schools—through a series of three year equality schemes.

Similar arguments of progressive implementation and a duty to amend legislation can be brought to the government's reservations on mental capacity and mental health. It is our contention that many of the clauses in the recent Mental Capacity and Mental Health Acts have not fully supported the rights, dignity and humanity of disabled people but have seen them as "other", as people whose rights must be different because either they are a danger or incapable. These perceptions are in themselves prejudiced and discriminatory and in violation of the Convention. We believe that this Government must recognise its own fault in this and be prepared to make progressive changes. The rights of disabled people can be implemented whilst protecting the rights of others—it just has to be done in non-traditional ways that uphold the dignity and equality of all. These non-traditional approaches have been accepted by the UK Government and the CRPD with the concepts of the social model of disability, independent living, self-advocacy and direct payments. Disabled people are also able to provide further approaches with regard to mental capacity and mental health, the right to live and the right to humanity. We just need governments to listen.

Another argument for delay put forward by Anne McGuire was the need to recognise that Europe had also signed the Convention. That has not prevented other European States from ratifying. We also hope to engage with the government on the antidiscrimination Directive currently being discussed at EU level, so as to bring it in line with the Convention, regardless of European confirmation of the Convention.

It is particularly sad that the UK has taken so long in ratifying—though 43 countries have already done so, without reservation. Representatives of these countries will discuss the implementation of the convention and choose the Committee on the Rights of Persons with Disabilities who will oversee implementation of the Convention at a Conference of State Parties to be held in New York on 4 November 2008. We were so much at the table during the elaboration process and now we are missing a real opportunity to take a leading role in monitoring. A great shame.

#### DISABLED PEOPLE IN THE UK REALLY NEED THIS CONVENTION

As the Joint Committee knows, despite the DDA, the Human Rights Act and the Lifetime Chances report, our rights are still violated.

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 ignored.

It 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.

It can be used for responses to local and national policies that affect disabled people.

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.

#### DISABILITY PRIDE

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.

Like all UN human rights instruments, the Convention on the Rights of disabled people is not just a legal tool. It also sets 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.

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

2 November 2008

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#### Memorandum submitted by the Department for Children, Schools and Families

Article 24 of the UN Convention on the Rights of Persons with Disabilities is about ensuring that disabled people can access education without discrimination and on the basis of equal opportunity. The UK Government is committed to continuing to develop an inclusive education system through each local authority to continue to develop a range of provision that enables all disabled children to achieve their potential. Working collaboratively with local authorities' support services and special schools, mainstream schools can ensure that the wide spectrum of need is met. However, our domestic legislation provides that where a decision is being made on a school placement for a child with a statement of special educational needs, s/he must be educated in a mainstream school unless that is incompatible with either the wishes of his/her parent, or the provision of efficient education for other children. We wish to continue to enable local authorities to take parental wishes into account, when determining school placements for children with statements of special educational need. Therefore, special schools remain an important part of local authorities' inclusive range of educational provision for disabled children, and we propose to take an interpretive declaration to Article 24 (2)(a) to clarify that the UK general education system includes both mainstream and special schools.

Further, Article 24 (2)(b) seeks to ensure that all disabled people 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. We are aware that some disabled children have their needs met by specialist provision, which can be some distance from their home and communities, particularly for children from rural areas. Additionally, there is a risk that parental choice could be limited if such non local opportunities were no longer available

to disabled children and their families. Anne McGuire's statement of 6 May 2008 said that we would need a reservation in respect of such children. Following representations we are considering how these concerns should be expressed to best reflect the Government's commitment to inclusion of disabled people.

3 November 2008

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### Memorandum submitted by TreeHouse

TreeHouse is the national charity for autism education. Our vision is to transform through education the lives of children with autism and the lives of their families. Established in 1997 by a group of parents, TreeHouse runs a school for children and young people with autism and campaigns for better autism education nationally.

Our core work is to ensure that every child and young person with autism is supported and able to participate fully in society. We believe that it is only through education that we can truly meet their needs.

Autism is a complex lifelong neurological condition affecting approximately 1 in 100 school aged children in the UK. Autism is unique because there is no other condition of such complexity, affecting so many children in the UK, about which so little is known.

Through our direct educational provision, our national campaigning work and our Parent Support Project, which supports parents as local campaigners and service-builders, we have been able to build extensive knowledge and expertise around best practice in the education of children with autism.

TreeHouse School has 66 pupils and we represent them and their families. Our Parent Support Project works with various campaigning groups of parents around the UK, the coverage of these groups, through networks, reaches up to 1,000 parents.

#### UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

As an organisation which represents children with disabilities and their families, TreeHouse fully supports the Convention and sees it as essential to ensuring commitment to equality for disabled people in the UK and around the world.

TreeHouse is a member of the UN Convention Campaign Coalition which aims to ensure that the UK government ratifies the Convention on the Rights of Persons with Disabilities (CRPD) without reservation. We support the Coalition's submission to the Committee and agree that 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.
- 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.
- Can be used for responses to local and national policies that affect disabled people.
- Can be adopted by local authorities, government departments, NHS Trusts, and all public bodies as part of their Disability Equality Schemes and as the basis of their Disability Equality Duty.
- Can be used as evidence to prove a violation in any case taken in relation to either the DDA or the Human Rights Act.
- Is an excellent support to training both non-disabled and disabled people in rights and equality for disabled people.
- Like all human rights instruments, is not just a legal tool, is also sets 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.

#### ARTICLE 24—EDUCATION

As an education charity representing children with disabilities and their families we have a particular interest in Article 24, especially as the government has stated its wish to make an interpretative declaration and make reservations on part 2 (a) and (b).

We support the full ratification of this article including parts 2 (a) and (b). We believe that inclusive education should be a right for all children and families. Our recent research report on inclusive education for children with autism<sup>49</sup> gathered parents' experiences and views. The research made a strong case for inclusion. Parents told us that inclusive education is important because inclusion could:

- Help prepare some children with autism to live more independently as adults.

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<sup>49</sup> Improving Inclusion: getting inclusive education right for children with autism (written and researched by Robbie de Santos and Sasha Daly), September 2008. Available at [www.treehouse.org.uk](http://www.treehouse.org.uk)

- Help children with autism become more widely valued and recognised.
- Enable children to feel part of a peer group and the wider community.
- Inspire confidence and happiness and reduce anxieties.
- Grant children with autism access to a suitable education.

At TreeHouse, we know that all kinds of education provisions for children with autism can fail to facilitate inclusion. It is the long term vision of TreeHouse that all children with autism will be able to access high quality education that is appropriate to their needs and abilities, provided by a skilled and specialist workforce at their local school.

#### GETTING INCLUSIVE EDUCATION RIGHT FOR CHILDREN WITH AUTISM

The debate around inclusive education had progressed significantly in the past year. RNID's *Beyond Bricks and Mortar*<sup>50</sup> and the Council for Disabled Children's *Inclusion Policy*<sup>51</sup> both conclude that successful and effective inclusion is achievable in any setting, as long as all the right factors are in place.

Our inclusion research report gathered the views of parents of children with autism. Fifty-eight parents responded to our survey, covering six English regions.

Although our sample was small, the findings clearly show that:

- Parents have positive experiences of inclusion in all kinds of school settings.
- Parents see the many benefits that successful inclusion can bring.
- Inclusion is important to parents not only for the experiences of their children while at school but also for their children to go on to live more independent lives.

We asked parents about the factors that contributed to successful inclusive practices for their children. Parents told us inclusion works well when:

- Teachers and other school staff have autism training.
- The individual child's needs are catered for.
- There are good partnerships between schools.
- Parents are listened to and involved.
- There is a positive school and staff ethos.
- Buddying and mentoring schemes are used.
- The child has help building social skills and confidence.
- Schools take a flexible approach to curricula and timetabling.

All of the above practices can be employed in any school setting, as long as the workforce are skilled to understand each child's needs, committed to making inclusion work, and the school has sufficient resources to facilitate an appropriate level of support. Indeed, several respondents reported some of these factors are currently being practiced in schools that their children attend, covering both mainstream and special schools.

#### WORKING TO PROGRESSIVELY FULFIL THE CONVENTION

Working towards full inclusion is achievable: we know that all schools can get inclusive education right for children with autism. At present, a range of different schools are facilitating a good, inclusive education provision for children with autism.

In working towards inclusion, schools must collaborate and work in partnership to share and disseminate good practice. This will help equip all schools with the capacity to provide an education for children with autism that meets the needs of each unique child.

TreeHouse school is a school for children with autism in north London. Our partnership working with local schools is an example of the collaborations that mainstream and special schools across the country can form to provide a high quality, holistic education to help each unique child fulfil their potential.

An example of this is our "reverse inclusion" programme with neighbouring Muswell Hill Primary School. Reverse inclusion is when children from a mainstream primary school visit a special school or unit to participate in play with disabled children.

A group of Year 6 pupils from Muswell Hill Primary School visit TreeHouse School each week to play with a group of TreeHouse pupils whose teachers think they will benefit from contact with mainstream peers. Relationships develop over the course of the school year as the mainstream school pupils gain a better

<sup>50</sup> [http://www.rnid.org.uk/virtualcontent/96239/beyond\\_bricks\\_mortar.pdf](http://www.rnid.org.uk/virtualcontent/96239/beyond_bricks_mortar.pdf)

<sup>51</sup> Available from the Council for Disabled Children

understanding of autism and of each child's strengths and needs, while the TreeHouse pupils build their confidence in social interaction. The programme depends on a close partnership between the special and mainstream schools and on the dedication and enthusiasm of the staff.

3 November 2008

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### Memorandum submitted by Scope

#### 1. INTRODUCTION

1.1 Scope is one of the leading disability organisations in the UK. We employ over 3,000 staff and have over 10,000 volunteers. We provide a range of services to disabled people including employment, education and residential and day services. Many of the disabled people we support have cerebral palsy and high levels of support needs. Scope is calling for the Government to ratify the UN Convention on the Rights of People with Disabilities in full, without reservation or limitation, by December 2008.

1.2 Scope is very concerned about aspects of the Government's approach to the ratification and implementation of the UN Convention on the Rights of People with Disabilities (the Convention). In particular we are concerned about:

- the time delay in the ratification;
- the proposal to add reservations to the Convention;
- the delay in signing the Optional Protocol of the Convention;
- monitoring;
- implementation and enforcement; and
- Scope also has specific concerns about disabled people's rights under the Convention on: violence to disabled people; poverty and disability; and disability and education.

#### 2. SIGNING AND RATIFICATION OF THE CONVENTION

2.1 The UK's contribution to the development of the Convention was crucial; however, the delay in ratification has already had consequences in respect of the UK's representation on the international monitoring mechanism of the Convention. According to Article 34 of the Convention, a committee will be established with the task of monitoring the implementation of the provisions of the Convention. The committee will consist of countries that have signed and ratified the Convention. As this process is well under way the UK will not be able to nominate a representative and consequently the UK will not be represented on that committee leading up to and during the first round of reports from member nation states.

2.2 This is the first UN Convention to be signed and ratified since the expansion of the powers of the European Union (EU) came into effect. However, despite the need to deal with shared and exclusive competence issues between the UK and the EU this should not be a reason for further delay. This is clearly not the case for other members of the EU who have already ratified the Convention.<sup>52</sup>

#### 3. RESERVATIONS AND INTERPRETATIVE DECLARATIONS

3.1 The Government's decision to consider making reservations to the Convention has been a source of great disappointment for Scope and disability organisations, as any reservation sends a signal that the UK Government can pick and choose which human rights disabled people can have. This is why Scope is calling for the UK Government to ratify the Convention without any reservations. Scope asks the Joint Committee on Human Rights to use all its influence to persuade the Government not to make any reservations.

3.2 Unfortunately, we know from letters from the Minister for Disabled People to the Joint Committee on Human Rights that the Government is considering a number of reservations, but because of a lack of communication between the Government and disabled people's organisations (see below) there is considerable confusion about exactly what these reservations might be. The five that seem to be being actively considered relate to the restrictions on armed forces; immigration; education; legal capacity and mental health legislation.

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<sup>52</sup> For example: Austria; Slovenia and Spain

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#### 4. PROPOSED RESERVATIONS—THE ARMED FORCES (ARTICLE 27)

4.1 The Ministry of Defence (MOD) has indicated that there is a need to enter a reservation in respect of service in the Armed Forces, consistent with the provisions of the Disability Discrimination Act 1995 (DDA). Service in any of the naval, military or air forces of the Crown are excluded from the DDA's employment provisions, to preserve their combat effectiveness<sup>53</sup>.

4.2 We understand that the MOD has softened its stance on this issue and is now prepared for the reservation to only apply to new recruits into the Armed Forces. Serving personnel who acquire an impairment or condition while employed by the Armed Forces can be retained—and therefore will not be subject to a reservation. This position appears to undermine the argument that the MOD has traditionally used for excluding disabled people from the Armed Forces, namely that combat effectiveness requires all personnel to be combat trained or ready at all times.<sup>54</sup>

4.3 Scope welcomes the MOD's new position, but would urge them to go further and drop all reservations with respect to the Armed Forces. There is no legal requirement to recruit personnel who are unable to do the job they are recruited for—so lifting a blanket ban on recruiting disabled people to the Armed Forces should have no effect on the ability of the military to undertake its important role.

#### 5. PROPOSED RESERVATION ON IMMIGRATION (ARTICLE 18)

5.1 The Minister's letter of 24 Sept 2008 to the Joint Committee on Human Rights said that the Home Office "will wish to have a reservation in respect to Convention Article 18.1 and an interpretative declaration in respect of 18.2". This would be based on the same rationale as the reservation made 17 years ago when the UK Government ratified the UN Convention on the Rights of the Child. However, the Government told the UN Committee on 23 September 2008 that it will be removing this reservation. As such we would welcome confirmation that the Home Office will not be seeking a reservation on Article 18.

#### 6. PROPOSED RESERVATION ON EDUCATION (ARTICLE 24)

6.1 The Department for Children, Schools and Families (DCSF) signalled that they intended to insert an interpretative declaration on Article 24, 2a: "Persons with disabilities are not excluded from the general education system"—in order to clarify that the general education system included both mainstream and segregated special schools. The DCSF also signalled their intention to reserve on Article 24, 2b: "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".

6.2 We understand that wording for an interpretative declaration put forward by the Council for Disabled Children and Equality 2025 that includes putting an end date of 2025 is being actively considered by the DCSF. However the latest indication is that DCSF might accept most of the wording proposed, but not the end date. If this is the case this may be considered to be a reservation rather than an interpretative declaration.

6.3 The UK Government's position, if adopted, is further compromised by the fact that other countries that have special schools as part of their education system have not made Article 24 subject to a reservation or even an interpretive declaration.<sup>55</sup> It undermines the UK's leadership on human rights in the international community. We would welcome an explanation of why the UK thinks it needs an interpretative declaration when other countries with similar education systems do not.

#### 7. PROPOSED RESERVATION ON LEGAL CAPACITY

7.1 The Office for Disability Issues has explained that the proposed reservation on legal capacity relates to Article 12—Equal Recognition Before the Law, and that it is a technical issue about the power of attorney. At present, we have no more information of the specific details of the proposed reservation and we would welcome more details on this and reassurance that disabled people's right to recognition of legal capacity is not weakened or undermined.

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<sup>53</sup> Minister for Disabled People's letter to the Joint Committee on Human Rights 24 Sept 2008

<sup>54</sup> The MOD position was further undermined by a recent Select Committee Report which stated that many non-disabled members of the Armed Forces are not combat trained or ready. The report states that: "Between January to December 2007, 42% of force elements reported serious weaknesses against their peacetime readiness levels—15% below target".

<sup>55</sup> For example: Germany, New Zealand, France and Australia

## 8. PROPOSED RESERVATION ON MENTAL HEALTH LEGISLATION

8.1 The details of the reservations around mental health legislation are likely to concern the detention and involuntary treatment of people deemed to lack capacity to make their own decisions and the use of community treatment orders, which were introduced by the Mental Health Act (MHA) 2007. As the Mental Health Alliance says: “The Mental Health [Act] has failed to heed the evidence about the risks of significant over-use of community treatment orders and the excessive powers the MHA [Act] gives to clinicians. And it treats people with mental health problems as second-class citizens by allowing treatment to be imposed on those who are able to make rational decisions for themselves.”<sup>56</sup> Again we want clarification to know why disabled people’s organisations have not been involved in discussions.

## 9. THE OPTIONAL PROTOCOL

9.1 The UK Government has not yet signed the Optional Protocol. However the Minister for Disabled People said that “the Government is aware of the importance that many disabled people and the Committee attach to this issue. The Government is carefully considering its position as part of the Convention ratification process in the light of the ongoing review by the Ministry of Justice of a similar Optional Protocol relating to the Convention on the Elimination of all Forms of Discrimination against Women”.<sup>57</sup> This sounds encouraging but Scope would press the Government to convert “carefully considering” to a firm commitment to sign the Optional Protocol.

9.2 The Optional Protocol is important not just so individuals who can, once national and European jurisprudence processes are exhausted, take a case to the UN Committee, but also as it offers a number of other benefits that will under-write disabled people’s rights. For example, allowing cases to go to the Committee will ensure that any rights issues that have been missed can be highlighted. It will also help the UK to be seen as an exemplar of good practice. Finally, opinions from the Committee under the Optional Protocol will help to develop and interpret the Convention and allow UK courts to take account of it.

## 10. MONITORING

10.1 There is little indication of how disabled people and their organisations will have a substantial and meaningful input into the monitoring of the Convention. With ratification expected before the end of the year there is an urgency at least for the Government to indicate how this is going to be organised and funded.

10.2 The problem of a lack of information for, and consultation with, disabled people has been an ongoing problem in the period since signing. For example trying to find out about the details of the various reservations suggested in the Minister’s letter<sup>58</sup> was very difficult, making the possibility of having a meaningful input very limited. Organisations such as Scope were left to contact the individual Government departments whose willingness to enter into a dialogue varied considerably. As a result there was a lot of misinformation about the exact details of the proposed reservations and interpretative declarations.

10.3 For disabled people and their organisations to have any confidence in the Convention to deliver substantive improvements in their lives and aid the Government’s commitment to equality for disabled people by 2025, their experiences and expectations and the rate of change in their lives needs to be measured. As Scope’s 2008 Disablism Audit points out there are few key indicators that allow for change to be recorded and measured.<sup>59</sup>

## 11. IMPLEMENTATION AND ENFORCEMENT

11.1 Since the passing of the first anti-discrimination legislation for disabled people in 1995 (the Disability Discrimination Act 1995 [DDA]) there have been a series of Acts that have outlawed discrimination against disabled people, either directly or indirectly, including: the extension of the DDA in 2000 and 2005; the Human Rights Act 2000, and the Mental Capacity Act 2005. These Acts are landmarks in the establishment of the rights of disabled people. However, no matter how strong these laws are in principle they have been weak in their enforcement.<sup>60</sup>

11.2 Scope’s concern is that the very signing and ratification of the Convention will be seen by Government and other key institutions as sufficient. We can look to the recent critical report by the UN Committee of the UK Government performance in respect to the UN Convention on the Rights of the Child to see that a great deal of effort and commitment will be required to make the Convention rights a reality.<sup>61</sup>

<sup>56</sup> <http://www.mentalhealthalliance.org.uk/news/preofbill.html>

<sup>57</sup> 6 May 2008

<sup>58</sup> Ibid

<sup>59</sup> No Fun, No Sex, No Future: Scope’s 2008 Disablism Audit (forthcoming December 2008)

<sup>60</sup> For an example of this, see the Scope report Doing Justice to Disability: Enforcing disabled people’s legal rights within a Single Equality Act ([www.scope.org.uk](http://www.scope.org.uk))

<sup>61</sup> Committee on the rights of the child (49th session). Consideration of reports submitted by states parties under Article 44 of the Convention, concluding observations—United Kingdom of Great Britain and Northern Ireland.

## 12. SPECIFIC AREAS OF CONCERN

12.1 As important as the process of ratification of the Convention is, it is only the precursor to ensuring enforcing and upholding these rights in practice. Whilst supporting and co-operating with the Equality and Human Rights Commission (EHRC) in their formal monitoring for the UK Government, Scope will be vigilant in evidencing disabled people's experiences of progress independently of this official process. In this Scope will concentrate on areas of human rights for disabled people in the Convention that we consider of particular importance. At present we are particularly concerned about three areas of human rights abuse against disabled people: violence against disabled people; the disproportionate number of disabled people and families living in poverty; and access to quality inclusive education (see Appendix).

## 13. SUMMARY

13.1 Scope is urging the Government to ratify the Convention with no reservations including the Optional Protocol. If an interpretive declaration is deemed necessary for Article 24 by the DSCF then an end date of 2025 is required. Without this it could be considered a reservation.

13.2 There has been little information and a lack of consultation with disabled people and their organisations over the ratification process. Also, little explanation or planning in consulting with disabled people and their organisations on what mechanism will be in place to record disabled people's experience of change in their rights under the Convention.

13.3 The history of implementation and enforcement of anti-discrimination legislation in the UK has been weak. The redress mechanism needs strengthening if they are to deliver the Convention rights.

13.4 Scope has concerns over specific areas of human rights abuse including: violence to disabled people in the form of hate crimes; that disabled people are more likely to live in poverty than non-disabled people; and finally that the education system disadvantages disabled children and young people.

## APPENDIX

### VIOLENCE AGAINST DISABLED PEOPLE (ARTICLE 16)

1.1 The publication of the report "Getting Away with Murder: Disabled people's experience of hate crime"<sup>62</sup> has highlighted what has been a hidden but significant source of violence to disabled people. Although official statistics are not collected on disability hate crime there are other sources of information that point to a high level of violence towards disabled people:

- A 2004 survey by the Disability Rights Commission (DRC) and Capability Scotland found that 47% of respondents had been attacked or frightened (by someone) because of their impairment.<sup>63</sup>
- One in five had suffered an attack at least once a week.<sup>64</sup>
- An in-depth study, *Another Assault*, by the mental health charity Mind, published in 2007, found that people with mental health issues were 11 times more likely to be victimised than the rest of society.
- 71% of survey respondents with mental distress had been victimised in the last two years.<sup>65</sup>
- A Study by NACRO showed that disabled people were four times as likely to have property stolen from them with the threat or use of violence.<sup>66</sup>

1.2 Though the above statistics show clear evidence of the widespread existence of disability hate crime, it does not mean that it is always recognised, accepted or challenged by those with the power to do so. There is now a wider recognition from police and prosecuting services about the extent and nature of hate crime against disabled people and policies are being activated to prosecute and punish the perpetrators of disability hate crimes. However, the persistence of disablism in UK society and as a consequence, disablism hate crime, remains.

1.3 Incidents of disability hate crime often stem from low-level harassment: name calling, intimidation and vandalism frequently escalate into more serious crimes. Bullying of disabled children at school is widespread and frequently goes unchallenged. This lays the foundations for the harassment and disrespect that many disabled people experience in adult life. Disablism attitudes are prevalent in UK society and can lead to human rights abuse in the form of violence against disabled people.<sup>67</sup>

<sup>62</sup> The Scope report—Getting Away With Murder: Disabled People's Experience of Hate Crime ([www.scope.org.uk](http://www.scope.org.uk))

<sup>63</sup> Disability Rights Commission and Capability Scotland, Hate Crime against Disabled People in Scotland: A survey report, 2004

<sup>64</sup> Ibid

<sup>65</sup> Mind, *Another Assault*, 2007

<sup>66</sup> NACRO Crime and Social Policy Section Briefing Sept 2002

<sup>67</sup> In the Scope report—No Fun, No Sex, No Future: The Scope Disablism Audit 2008 (forthcoming December 2008) 18%—nearly one in five disabled people—said that they did not very often, rarely or never felt safe and secure at home or in their local community during the day and at night. This is a significant percentage and illustrates the extent of the problem of violence against disabled people.



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*Poverty and Disability (Article 28)*

2.1 Official statistics consistently show that disabled people are more likely than non-disabled people to live in poverty.<sup>68</sup>

- They are twice as likely to live in households that are fuel poor.
- The additional cost of disability can be as high as 69%.<sup>69</sup>
- Historically they are likely to earn less per hour than non-disabled people.<sup>70</sup>
- In a Scope survey when asked if they had enough money to buy the things they needed, 41% responded either not very often, or rarely/never.<sup>71</sup>

2.2 Such poverty has its roots in the systemic discrimination against disabled people both in lower levels of income and also in the higher levels of expenditure. The consequences for disabled adults and disabled children and their families are to impact on their health and wellbeing as well as their opportunities and aspirations.

*Education (Article 24)*

3.1 As mentioned in above (Section 6) Scope is very concerned about proposals to enter a reservation or interpretive declaration on Article 24. The continuation of a twin track state education system in which a proportion (however small) of disabled children are educated away from the family home and their local community is unacceptable in any civilised society in the 21st Century. The number of disabled children enrolled at special schools fell in number from 88,930 in 2003 to 84,620 in 2006, but increased to 84,680 in 2007.<sup>72</sup>

3.2 In a general sense disabled children and young people in education are at a considerable disadvantage compared with their non-disabled peers.

- The percentage of 16 year olds who obtained Level 2 who had no identified Special Educational Need (SEN) was 58.5% compared with those who had some form of SEN identified who obtained 11.1%.<sup>73</sup>
- The proportion of 16 year olds studying for Level 3 qualifications who are disabled is 39% compared with 50% of non-disabled 16 year olds.<sup>74</sup>
- The proportion of disabled young people aged 19 with experience of higher education is 28% compared with 41% of non-disabled 19 year olds.<sup>75</sup>
- In 2006 29% of young people who had either a disability or a health problem were Not in Education, Employment, or Training (NEET). This compares with 12% for those who did not have a disability or a health problem.<sup>76</sup>

3 November 2008

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**Memorandum submitted by Deborah King**

1. “International law is not rules. It is a normative system. All organized groups and structures require a system of normative conduct—that is to say, conduct which is regarded by each actor, and by the group as a whole, as being obligatory, and for which violation carries a price. Normative systems make possible that degree of order if society is to maximise the common good—and, indeed, even to avoid chaos in the web of bilateral and multilateral relationships that that society embraces. Without law at the domestic level, cars cannot travel safely on the roads, purchases cannot be made, personal safety cannot be secured. Without international law, safe aviation could not be agreed, resources could not be allocated, people could not safely choose to dwell in foreign lands. Two points are immediately apparent. The first is that this is humdrum stuff. The role of the law is to provide an operational system for securing values that we all desire—security, freedom, the provision of sufficient material goods. It is not, as is commonly supposed, only about resolving disputes. If a legal system works well, then disputes are in large part *avoided*. The

<sup>68</sup> Department for Work and Pensions, HM Treasury, Department of Children, Schools and Families: Child Poverty Statistics 2006–07: at a glance.

<sup>69</sup> Source: Zaidi, A. and Burchardt T. (2003) Comparing incomes when needs differ: equalisation for the extra cost of disability in the UK. Quoted in the Dept of Work and Pensions: Reviewing the existing research on the extra cost of disability. Working Paper 21

<sup>70</sup> Labour Force Survey. Spring 2002–2006, January–March 2007.

Quoted in the ODI Annual report 2008: Annex two: Indicators data

<sup>71</sup> No Fun, No Sex, No Future: The Scope Disablism Audit 2008 (Forth coming December 2008)

<sup>72</sup> DCFS School Census January 2007. SFR 20/2007

<sup>73</sup> <http://www.dcsf.gov.uk/rsgateway/DB/STA/t000767/index.shtml>

<sup>74</sup> Youth Cohort Study (YCS) Cohort 12, Sweep 1 (16 year olds England and Wales). Quoted in the ODI Annual report 2008: Annex Two: Indicators data

<sup>75</sup> Youth Cohort Study (YCS) Cohort 11, Sweep 4, (19 year olds England and Wales). Quoted in the ODI Annual report 2008: Annex two: Indicators data

<sup>76</sup> Youth Cohort Study, Cohort 12, Sweep 3.

identification of required norms of behaviour, and techniques to secure routine compliance with them, play an important part. An efficacious legal system can also *contain* competing interests, allowing those who hold them not to insist upon immediate and unqualified vindication. Of course, sometimes dispute-resolution will be needed; or even norms to limit the parameters of conduct when normal friendly relations have broken down and dispute resolution failed. But these last elements are only a small part of the overall picture.

The second point is that, in these essentials, international law is no different from domestic law. It is not, as some suppose, an arcane and obscure body of rules whose origin and purpose are shrouded in mystery. But, if the social purpose of international law and domestic law is broadly similar, there are important differences arising from the fact that domestic law operates in a vertical legal order, and international law in a horizontal legal order. Consent and sovereignty are constraining factors against which the prescribing, invoking, and applying of international law norms must operate”.<sup>77</sup>

2. What does the above quote, written by Judge Rosalyn Higgins, President of the International Court of Justice, mean in relation to the Joint Committee’s work on the UN Convention on Disability?

3. First, it is a reminder that the Convention on Disability derives from the United Nations process. Part of this involves establishing “conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”.<sup>78</sup>

4. Second, it is a reminder that the Human Rights Committee can look vertically at the UK legal system and ask: “*Does the UK have an efficacious legal system?*” Also, “*Does the MoD need to conduct a pre-emptive strike against the UN Convention on Disability?*” The impact of a reservation is to insist upon “immediate and unqualified vindication”. This will be without any UK judge being able to test evidence, weigh up competing versions or to exercise his or her own independent judgment about the rule of law in relation to the MoD, its proposed reserved areas and the UN Convention on Disability.

#### STEREOTYPING

5. In relation to gender discrimination, the Ministry would have saved £60 million had it not unlawfully dismissed 5,700 servicewomen for pregnancy. Had politicians had the **foresight** to act differently, this waste of personnel and money would not have occurred. We have seen, with the death of Corporal Sarah Bryant,<sup>79</sup> that any inhibitions or stereotypes which politicians or the armed forces may have had about women serving in the armed forces were utterly misplaced. Similarly with the fire service, Fleur Lombard,<sup>80</sup> the first female fire fighter to die in service in peacetime, shows stereotypes play no part in **rational** administration of our most important public services.

We need **foresight** from this Committee in relation to disability.

6. It is important to be clear about what a recommendation of “no reservation” would mean to the Armed Forces. It would **not** mean the following, put in tabloid headlines so that the real impact can be seen:

- “**Forces made to recruit cripples**”.
- “**MoD to waste millions on Tribunals**”.
- “‘PC gone mad’ say generals”.

All of these headlines would be a deliberately incorrect interpretation of what ratification of the UN Convention on Disability without reservation would mean.

6.1 What it does mean, however, is that the Armed Forces start to be looked upon as a progressive employer, capable of setting rational standards in relation to physical and mental ability without the need to hide behind blanket bans as if they had no real case to argue. Real resources need to be put towards assessments of individuals who are atypical or not defined as “perfect” in a specific physical or mental way.

#### MILITARY CONTINGENCY PLANS—DO THEY INCLUDE BLACK SWANS?

7. Given the way in which the credit crunch has been perceived as a “big surprise” or Black Swan, for which systems have had to be created to react very quickly, what would be the recruitment effects of significant numbers of the armed forces being blown up or injured so seriously that they could not fight?

7.1 Contingency plans which did not envisage the use of people currently defined as disabled would be irrational. Although an immediate MoD answer might say “draft”, the U.K. perceives herself to have a stronger military by virtue of it being a volunteer force. Also, in the US, the draft has presented political difficulties, which may relate to the perceived validity of the war:<sup>81</sup>

“On 30 September 1963, President John F Kennedy established the Task Force on Manpower Conservation to investigate why, in 1962, an astonishing 49.8% of 306,073 Selective Service

<sup>77</sup> Her Excellency Judge Rosalyn Higgins DBE—United Kingdom judge and President of the International Court of Justice—“Problems and Process—International Law and How we use it”—Clarendon Oxford 1994.

<sup>78</sup> Preamble to the Charter of the United Nations and Statute of the International Court of Justice—25 June 1945—into force 24 October 1945.

<sup>79</sup> <http://www.mod.uk/defenceinternet/defencenews/militaryoperations/corporalsarahbryantcorporalseanreevelancecorporalrichardlarkinandpaulstoutkilledinafghanistan.htm>

<sup>80</sup> <http://www.avonfire.gov.uk/Avon/About+us/Fleur+Lombard+Bursary.htm>

<sup>81</sup> [http://www.gwumc.edu/sphhs/departments/healthpolicy/chsrp/downloads/mil\\_prep042605.pdf](http://www.gwumc.edu/sphhs/departments/healthpolicy/chsrp/downloads/mil_prep042605.pdf)

draftees failed their pre-induction peacetime medical and/or mental aptitude examinations, thus disqualifying them for military service”.

#### FAILURE TO DEVELOP PROCESSES IN ADVANCE CAN BE FATAL

7.2 Yet presently the lens through which the MoD views disabled people rests on the assumption that disabled people are to be discarded from the recruitment process. Yet the disabled people in question may be more ready, willing and able than the civilian population subject to a draft. This leads to a **failure to develop processes** by which the **real** assessment of a disability is precluded.

7.3 In theatre, a disabled person who has been trained to operate a specific piece of equipment may use it more effectively than a “perfect” soldier who has not been so trained.

7.4 The issue involves looking at whether a specific disability precludes the level of inter-operability required. But rational **foresight** also requires the allocation of resources to the MoD to enable them to set up processes which allow them to assess the **real** effect of a disability, not just the stereotyped perception of the impact which that disability has.

7.5 Having a blanket MoD reservation on the recruitment side is not a logical policy given the pace of change in biomedical and other scientific areas:

“A soldier has returned to Afghanistan, despite being badly injured by a roadside bomb attack during an earlier tour of duty. Anthony Makin, from Benwell, Newcastle had his lower right leg amputated and was fitted with a prosthetic limb. But he surprised doctors by fighting his way back to fitness during a two-year rehabilitation programme”.<sup>82</sup>

7.6 Disabilities, or a *perceived* disability in 2008, may not be considered a disability in 2012. We need to keep an open, not a closed mind on this issue.

#### REGIONAL AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS CAN LEAD TO IMPROVEMENTS IN THE QUALITY OF MoD DECISION MAKING

8.1 We have a common law system which enables situations to be examined on a case by case basis. Part of its beauty is that it creates the capacity to pull down threads of the international law tapestry and use the concepts in appropriate cases. As a Ministry, Defence is rarely happy to be governed by legislation as it perceives itself to be solely concerned with defence and wants the minimum level of restriction on its activities.

8.2 However, regional and international human rights instruments have led to improvements in MoD practice, which their legal officers and service personnel accept, with **hindsight**, do in fact improve the quality of decision making within the MoD. An example of this is the case of Findlay<sup>83</sup> which related to the fairness of the courts martial system.

8.3 Politicians need to have the **foresight** to recognise when arguments for exemption are not valid.

#### RECRUITMENT PROBLEMS ARE NOT MADE EASIER BY UNFAIRNESS

9. This makes it easier to ensure that prospective recruits to the Armed forces consider the MoD is a fair employer. A newspaper article in May 2008 reports “*all three forces are significantly under-strength in terms of personnel*”.<sup>84</sup>

Given the economic situation, it is important to ensure the MoD is an attractive employer to recruits.

#### SANTA IN A WHEELCHAIR—WHY IS HE RELEVANT TO THE COMMITTEE?

10. The cartoon of Santa in a wheelchair was kindly drawn and donated by Matt in 1996. It was to help a non-violent direct action by disabled people complaining about London Underground Limited’s failure to take action about the absence of disabled access on the tube. Handcuffing themselves to a tube train led to a temporary shutdown of service.

<sup>82</sup> <http://news.bbc.co.uk/1/hi/england/tyne/7647292.stm>

<sup>83</sup> *Findlay v UK* (25 February 1997) (1997) 24 EHRR 221 *Article 6—right to a fair trial*

The applicant developed post-traumatic stress disorder after taking part as a British soldier in the Falklands war. He threatened to shoot himself and a number of colleagues, firing some shots in the air. He was court-martialled for this. A convening officer was responsible for appointing the participants in the court-martial and for confirming the sentence. The applicant was sentenced to imprisonment and dismissed from the army. His requests for a review were rejected, as was an application for judicial review. The European Court (9 judges, including Sir John Freeland, the UK judge) held that **there had been a breach of Article 6(1) but awarded no compensation**. The Court stressed that the safeguards available to the applicant (eg judicial review) did not remedy the flaws caused by the role of the convening officer—a person is entitled to a first instance trial which fully complies with Article 6.

<sup>84</sup> <http://www.telegraph.co.uk/news/uknews/1953572/Half-of-Armed-Forces-seriously-under-strength.html>

10.1 No arrests were made, LUL agreed to meet protestors and the event passed off peacefully. Santa however had to have a party at Hillingdon station in December 1996 as LUL had not responded to all the issues as they promised.

10.2 The glacial pace of change in relation to disability issues reminds us that disability is the area where significant change happens very slowly. The tube in London is still not fully accessible to disabled people.

10.3 Reservations hamper the development of global legal norms.

3 November 2008

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### **Memorandum submitted by the Spinal Injuries Association**

The Spinal Injuries Association (SIA) is the leading national user-led organisation supporting the interests of 40,000+ people in the United Kingdom who have sustained a spinal cord injury (SCI). SIA has a membership of over 5,000 people who have sustained a SCI.

SIA believes that after hearing evidence on 18/11/08, regarding the merits of the UN Convention on the rights of persons with a disability treaty, and how it will greatly benefit and advance the rights of all disabled people in the UK and across the world, the Joint Committee on Human Rights should recommend to the UK Government that they ratify the convention without delay and without any reservations.

Indications are that the UK Government is stalling on ratifying the Convention and has indicated that it intends to reserve on some crucial areas. These include:

- Education.
- Armed Forces.
- Mental Capacity.
- Asylum/Immigration.

The Convention allows for the progressive realisation of social and economic rights, so reserving is unnecessary. SIA believes that Human Rights are universal and something that Government's can not pick and choose—So why does the UK wish to continue established discriminatory practice?

Fourty-one Governments have ratified the United Nations Convention on the Rights of People with Disabilities. They meet in New York (1st week of November 2008) to consider implementation. Because the UK has not yet ratified the convention we will not be present, despite having played a leading role in creating this first Human Rights' Treaty of the 21st Century.

It is vital that the UK ratifies the Convention to enable current and future practices and policies that affect the lives of disabled people to be scrutinized against the rights laid out in the Convention. These rights should be enshrined in UK law, policy and practices. All current laws, policies or practices that do not fully meet the spirit of the Convention should be reviewed and altered in order to comply with the Convention.

For Example:

Article 25, paragraph b of the Convention (Health) states; "Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons".

SIA believes that upon diagnoses of a SCI, that a recognised SCI Centre should be notified, and providing no medical complications prevent it, the patient should be transferred to a recognised SCI Centre within 48 hours. Further, once the SCI condition is confirmed the SCI management should be in consultation with the specialist SCI Centre until a safe transfer can be affected. The benefits of such a policy are that the patient's treatment is guided by a multi-disciplinary experienced Staff and they will therefore benefit from:

- Specialist treatment & rehabilitation.
- Peer & Psychological Support.
- Education in managing their SCI.
- Reduced risks of complications arising from their SCI condition, some of which can be life threatening.
- Better long term outcomes of their condition.
- Reduced stay in hospital.

SIA has undertaken a full review of the state of the UK SCI Service and has found that approx 20% of people having a SCI never gain access to a SCI Centre which is in direct conflict with Article 25, paragraph b of Convention.

SIA has made some clear recommendations regards how the above gap in the UK SCI service can be plugged and we are currently lobbying Government to implement them.

SIA believes that if the Government had ratified the Convention without reservations our campaign to Preserve & Develop this specialized service would have more leverage. The service would improve and more people would have access to a SCI Centre after having a SCI. In turn those people would be better able to manage their condition, lessening their chance of being re-admitted to hospital for treatment due to SCI related complications and enable them to take a full and worthwhile part in society.

3 November 2008

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### **Memorandum submitted by Changing Perspectives**

Changing Perspectives wants the Government to ratify the UN Convention for People with Disabilities without reservations and interpretive declarations. We believe that all the articles are equally important and need full implementation in order to uphold the spirit of the UN Convention. We appreciate that amending existing legislation, policies and practises in order that they are compatible with the UN Convention for People with Disabilities cannot immediately happen. But the Convention emphasises the state's need for a progressive realisation of such human rights. A similar approach taken with the Government's commitment in the Improving Life Chances of Disabled People by 2025 whereby policies are gradually being introduced such as individualised budgets, an overhaul of the benefit system and alike. Eradicating inequality can only be achieved if disabled peoples human and civil rights are fully enforceable.

We urge the Government to ratify the Convention to ensure that disabled peoples human rights are universally protected regardless who they are and where they live.

Changing Perspectives is an organisation which provides training and consultancy services and campaigns with disabled people for full enforceable civil and human rights.

Changing Perspectives is a member of United Nations Convention Campaign Coalition and fully supports their position.

3 November 2008

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### **Memorandum submitted by Ray Fletcher**

I am writing as a private individual to the Committee pleading with the Committee to press the Government to support the Convention and Protocol in full with no reservations.

In doing this the UK Government would be acting after many other countries have already done so but would at least be signalling that we as a nation believe wholeheartedly in the rights of disabled people in all aspects of their life.

I would remind the Committee that the UK took a lead in the 1970's when under Harold Wilson the then Labour Government appointed Alf Morris as the world's first ever Minister with special responsibilities for Disabled People.

The UK Government were a little slower than some other countries in introducing formal legislation to prevent discrimination but at least with the Disability Discrimination Act 1995 we made a major step forward and were amongst the leaders in introducing such legislation. This has been further progressed since then with extensions to the original act under Maria Eagle's guidance.

Overall therefore the UK has been at the forefront of change for disabled people since the 1970's but on this Convention there appears to be a marked reluctance to embrace the principles and practicalities that go with the convention.

There is no reason why this should be the case. All of us are committed to full inclusion of disabled people in all areas of life and this convention reinforces that aim.

Reservations, amendments or exclusions in ratifying the convention and protocol in my personal view indicates a reluctance to really commit to achieving full inclusion of disabled people and in the process undermines the governments' own disability strategy.

The UN convention has come about because of particular initiatives and campaigns and the UK was the birthplace of one of the key building bricks in developing to the Convention.

In 1999 Lord Morris of Manchester presented a Charter for the Third Millennium to RI's World Congress held in London. Alf himself chaired the group that drew up the Charter which included Archbishop Desmond Tutu; Professor Stephen Hawking; the then Commonwealth Secretary HE Emeka Anyaoku; together with notable representatives from Saudi Arabia, Jordan, India, Hong Kong, Russia, China and the USA.

The UK therefore had a major part to play in bringing this Convention into life and it is a tragedy that this nation of progressive thinkers has held back on fully ratifying the convention and protocol.

Now is the time to do it. No reservations. No excuses. Just do it!

6 November 2008

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### Memorandum submitted by RNID

#### INQUIRY INTO RIGHTS OF PEOPLE WITH DISABILITY

RNID, the UK's largest charity dedicated to the UK's 9 million deaf and hard of hearing people, welcomes the Government's intention to ratify the UN Convention on the Rights of Persons with Disabilities. We would like to offer the following comments:

##### OPTIONAL PROTOCOL

We urge the Government to sign and ratify the Optional Protocol. This would allow individuals to take a complaint to a Monitoring Committee once the legal process in an individual's own country has been exhausted. We do not believe that there would be a high volume of complaints to this Committee, following the example set by the Convention on the Elimination of Discrimination against Women (CEDAW). The Government has signed and ratified the Optional Protocol to the CEDAW and few individuals appear to have used this avenue. The Monitoring Committee would only have the power to comment on a case and there would be no mechanism for compensation.

Individuals cannot use the UN Disability Convention in domestic proceedings (although the provisions can provide an interpretative guidance). That means that there may be an issue about the right to an effective remedy in respect of the Article 6 (the right to fair trial) of the Human Rights Act (HRA).

##### RESERVATIONS/INTERPRETATIVE DECLARATIONS

As you are aware, States can make reservations or interpretative declarations with regards to certain parts of the Convention that they do not feel able to endorse, while ratifying the remainder of the UN Convention.

We would want to know what reservations the Government is planning to make with regards to the UN Disability Convention, and what the rationale is behind the reservations. Where there are grounds for a reservation, we would urge the Government to explore other means to achieve the same objective without making a reservation, I would be interested to know if this is something the Government has looked into.

It is important to bear in mind that the UN Disability Convention requires progressive realisation, ie that signatories are expected to have achieved or to be working towards achieving the rights and responsibilities set out in the convention.

If the Government believes they have a good case, then they should be confident that their approach will be recognised by the monitoring body of the UN Disability Convention.

##### ARMED FORCES

We would like to know what guarantees the Government will put into place that the UN Disability Convention will protect members of the Armed Forces. The UK Government has traditionally resisted calls to extend disability discrimination legislation to the armed forces, and it appears likely that they will make a reservation to the UN Convention for the armed forces. However, war and conflict have always been a major cause of disability. There are also issues around the level of support that the armed forces are able to provide to people who have become disabled through war and conflict and a recent report in the Times indicated that there is large scale problem with deafness amongst veterans of the current conflict in Afghanistan.

##### IMMIGRATION

We would urge the Government to make no reservation with regards to immigration.

A small minority of people who arrive in the UK for long-term purposes are deaf. Some will have suffered noise induced hearing loss, whilst others will have been profoundly deaf from birth or a young age. Illness is a major cause of deafness, particularly in underdeveloped countries where vaccines against deafness-related diseases such as German measles or mumps aren't readily available.

The Government has recently announced that they will remove the reservation on immigration from the UN Convention on the Rights of the Child. This is an encouraging sign that they will not make a reservation on immigration for the UN Disability Convention. Immigration is covered by the Disability Discrimination Act (DDA), so even if the UN Disability Convention does not apply, then the immigration services would still have to comply with the DDA.

#### EDUCATION (ARTICLE 24)

We would like to ensure that if the Government is planning to make a reservation or interpretative declaration around education they will take steps to make sure that disabled children and adults will have full educational opportunities and be allowed to realise their full potential.

The Government may make a reservation or interpretative declaration with regards to the right to be schooled in the local authority area of the child. They want to enable local authorities to pay for the child's education outside their area. I don't believe that there is anything in the UN Convention that stands in their way as long as the best interest of the child is at heart. We are concerned that there may be a situation of a local authority refusing to pay for support in a local school and instead requires the child to be schooled at a different school against the best interest of the child (and against the wishes of the parents), on the ground of costs.

*3 November 2008*

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#### Letter from Rehabilitation International

On behalf of RI, a global and diverse network of over 1,000 disability-related organizations in nearly 100 countries working together to implement the rights and inclusion of persons with disabilities, we thank your Government for its support of the UN Convention on the Rights of Persons with Disabilities (CRPD).

RI urges your Government to uphold its commitment to this treaty by adopting the CRPD and its Optional Protocol as a matter of priority and without reservations or declarations. Indeed, the call for a UN Disability Rights Convention began in London in 1999, under the leadership of The Rt Hon Lord Morris of Manchester, when the Charter for the Third Millennium was adopted at the RI World Congress.

The UK government must continue its leadership by ratifying and implementing the CRPD and its Protocol without any reservations, living up to its commitment to upholding disability rights.

*13 November 2008*

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#### Memorandum submitted by DWP

Confirm in more detail the steps taken by Government to consult on their proposals for reservations or interpretative declarations, including which persons or groups were consulted and when, and the substance and outcomes of any of these consultation exercises. It would be particularly helpful if you could identify which disabled people or disabled people's organisations were consulted, when they were consulted and what they were asked, and what their responses were.

If consultation was limited to Equality 2025, I would be grateful if you could confirm what steps were taken to consult Equality 2025 and the outcome of that consultation. For example, was Equality 2025 asked to consider specific proposals for any reservations or interpretative declarations and if so, what was their response?

1. Further to Jonathan Shaw's appearance before the JCHR on 18th November, you have requested further information about discussions with disabled people about the proposals for reservations and interpretative declarations in respect of the UN Convention on the Rights of Disabled People. I note that in referring to the Minister's evidence to the Committee you suggest that the Minister told the Committee that the Department had consulted disabled people and their organisations on progress towards ratification of the Convention, and possible reservations or interpretative declarations including through consultation through Equality 2025. On a point of clarification, the terms the Minister used throughout his evidence were discussed/discussions. Your use of the terms consult/consultation implies formal consultation procedures.

2. Engagement with organisations of and for disabled people has taken place in a variety of forms as work on ratification has progressed.

3. Prior to Anne McGuire's Parliamentary Statement on 6th May 2008, discussions about ratification were broad updates in the course of various general meetings that the Minister and officials had with organisations of and for disabled people, and with Equality 2025.

4. Anne McGuire's statement was circulated to a number of organisations of and for disabled people, the EHRC and Equality 2025, providing them with information which they could follow up if they chose.

5. Subsequently Equality 2025 requested meetings with a number of Departments and members of Equality 2025 met official/s from: the Ministry of Defence (MOD) on 23rd June; the Department for Children, Schools and Families (DCSF) on 2nd July; and the Home Office on 23rd July specifically to discuss their proposed reservations and the reasons for them.

6. The outcome of these meetings was that:

- a. Ministry of Defence agreed that it would discuss the wording of its proposed reservation with ODI and consider ways of presenting it to explain clearly the policy rationale behind the position adopted.
- b. Equality 2025 would provide DCSF with advice about the proposed education reservation and provide a form of words for an interpretative declaration. Following the meeting with DCSF, members of EQ2025 met the Council for Disabled Children (see paragraph 10 below) and SCOPE and, offered a form of words to DCSF.
- c. ODI forwarded the text of the proposed Home Office reservation and interpretative declaration to Equality 2025 on 24th July for its consideration and provide comments if appropriate.

7. Equality 2025 also met an official from the Department of Health (DH) on 24th June to discuss compatibility issues relating to the treatment of people with mental health conditions which that Department was then considering. It was agreed that Equality 2025 would have further meetings with DH if that Department concluded that there was a need for reservations/interpretative declarations. As the Committee will be aware, DH has concluded that a reservation or interpretative declaration is not necessary.

8. Following Anne McGuire's statement, ODI officials had meetings (at the request of those organisations) with Disability Action (in Northern Ireland) on 25th June and with SCOPE on 2nd September. At both these meetings Mrs McGuire's statement was discussed in detail.

9. At a meeting with organisations for disabled people on 26th June 2008, when the UN convention was one of six items on the agenda Mrs McGuire and officials outlined the position with regard ratification and referred to some of the possible reservations and interpretive declarations being sought by eg the Ministry of Defence and DCSF, and the principle of progressive realisation. The group asked whether there was anything that they could do to help progress things and the Minister suggested they might like to talk to some of the Departments which were considering reservations or declarations. Organisations attending that meeting were Leonard Cheshire, MENCAP, MIND, RADAR, RNIB, RNID, and SCOPE.

10. Jonathan Shaw had a meeting with organisations of disabled people on 29 October 2008, when the Convention was one of three items on the agenda. In that discussion the group expressed their concerns relating to UK ratification of the Convention. Organisations which attended the meeting were Disability Awareness in Action, the Alliance for Inclusive Education, UK Disabled Peoples Council (UKDPC), National Centre for Independent Living (NCIL), Spinal Injuries Association, People First and the UK Advocacy Network.

11. DCSF has regular meetings with the Council for Disabled Children (CDC), and has discussed its proposed reservation/interpretative declaration with that body as well as with Equality 2025. The Convention was discussed in general terms at DCSF's meeting with the CDC on 8th July 2008 and following that meeting the CDC sent DCSF a revised form of wording. Organisations which attended the 8th July meeting were: Afasic; Alliance for Inclusive Education; Association of Educational Psychologists; Barnardo's; The Children's Society; The Children's Trust; Council for Disabled Children; EDCM; Kids; NAS; NDCS; Out and About; a Parent representative; Scope; SEBDA; Standing Commission on Carers; Sunfield School; Together for Disabled Children; and TreeHouse.

12. The ODI has had, and continues to maintain, information about the Convention, and progress towards ratification on its public website.

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