

# Call for Evidence: UNCRPD Shadow Report

November 2021

## Introduction

1. This document forms the submission from Just Fair for the call for evidence issued by the Reclaiming Our Futures Alliance, the DPO Forum, Disability Rights UK's Our Voices and Disabled People Against Cuts. The purpose of this work is to help to inform the shadow report for England in relation to the UK's compliance with the UN Convention on the Rights of Persons with Disabilities (UNCRPD)
2. **Just Fair**<sup>1</sup> is a UK charity that is working to realise a fairer and more just society by monitoring and advocating for economic, social, and cultural rights (ESCR) in the UK. We aim to ensure that the UK government's law, policy, and practice comply with international and domestic human rights obligations pertaining to ESCR.
3. This submission is supported by evidence from:
4. **Better ConNEcted**,<sup>2</sup> a collaboration of organisations and individuals across the North East of England who are working in some way to tackle digital inclusion and are passionate about creating lasting change in this arena. The Better ConNEcted campaign was developed in response to the digital exclusion experienced by many groups in the North East of England during the first COVID-19 lockdown – in summer 2020. Its aim is to build a North East where digital inclusion is a right enjoyed by all, where people have the skills, technology, and internet to access goods, services, and information, in order to close the digital divide. The campaign development team is supported by Connected Voice, Collective Impact Agency, Difference North East, VONNE, Inclusion North, Hartlepower, Digital Voice, Not Equal, Sunderland Software City, Newcastle Vision Support, Traiders and County Carers Support.<sup>3</sup>
5. **The Alliance for Inclusive Education (ALLFIE)**,<sup>4</sup> a national organisation led by disabled people working on educational issues and, in particular, working to promote the right for disabled students (including those with special educational needs and disabilities; SEND) to be included in mainstream education, as set out in Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD).
6. **Difference North East**,<sup>5</sup> Difference fights for equality for disabled people and an end to discrimination on the grounds of disability. They collect everyday experiences of disabled people and use these to shape their campaigns to make real change.

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<sup>1</sup> <https://justfair.org.uk/>

<sup>2</sup> <https://www.betterconnected.org.uk/>

<sup>3</sup> <https://www.betterconnected.org.uk/about-us>

<sup>4</sup> [https://www.allfie.org.uk/?gclid=EAlaIqobChMI2dL2zr7B7QIVcYBQBh0OYApjEAAAYASAAEgIM5PD\\_BwE](https://www.allfie.org.uk/?gclid=EAlaIqobChMI2dL2zr7B7QIVcYBQBh0OYApjEAAAYASAAEgIM5PD_BwE)

<sup>5</sup> <https://differencenortheast.org.uk/>

## Our Evidence

7. We are aware of tight word limits that the civil society shadow report must adhere to. For this reason, we have limited our evidence to four areas where we believe we can most usefully contribute evidence for the joint civil society report:
  - The full implementation of the Equality Act 2010, in particular, Section 1, the socio-economic duty
  - The accelerated use of online services during the COVID-19 pandemic and the rights of disabled people
  - Plans that could undermine or indeed scrap the Human Rights Act 1998 (HRA)
  - the impact of the UK's exit from the European Union on the human rights and equalities enjoyed by disabled people in the UK.

### The full implementation of the Equality Act 2010, in particular, the socio-economic duty

8. CRPD Concluding Observation 2017:
  17. *The Committee recommends that the State party:*
    - (a) *Bring its anti-discrimination legislation into accordance with the Convention and speed up the process to bring into force all legislative provisions in the Equality Act 2010, including those concerning reasonable accommodation in the housing sector*
9. The Equality Act 2010, which applies to England, Wales, and Scotland, brought together 116 pieces of anti-discrimination legislation and requires equal treatment in private and public services, and access to employment, for the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
10. Despite the above recommendation from CRPD, and similar recommendations in 2019 from CEDAW<sup>6</sup> and in 2016 from CESCR,<sup>7</sup> Section 1 of the Act, known as the socio-economic duty, is not yet implemented in England, and Northern Ireland still lacks a single equality act.

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<sup>6</sup> Committee on the Elimination of Discrimination Against Women, Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland, 18 February–8 March 2019, "16. *The Committee recommends that the State party:*

(a) *Revise its legislation in Northern Ireland to ensure that it affords protection to women there on an equal basis with women in other administrations of the State party;*

(b) *Ensure the uniform and effective application of the public sector equality duty, so that all public bodies across its jurisdiction systematically undertake gender equality impact assessments;*

(c) *Review and amend the public sector equality duty in order to address situations of intersecting forms of discrimination, such as discrimination faced by "Black, Asian and Minority Ethnic" women, older women, women with disabilities, asylum-seeking and refugee women, lesbian, bisexual and transgender women and intersex persons;*

(d) *Bring into force the provisions of the Equality Act relating to the public sector duty regarding socioeconomic inequalities (sections 1 to 3 of the Act) and "combined discrimination" (section 14 of the Act)."*

<sup>7</sup>Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, 14 July 2016,

11. If implemented, the duty would require public bodies, “when making decisions of a strategic nature about how to exercise its functions’ to ‘have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.”
12. The implementation of this duty has particular relevance for the right of disabled people in the UK to an adequate standard of living and social protection.<sup>8</sup> Nearly half of all individuals who are in poverty live in a household with at least one person who is disabled<sup>9</sup> and high levels of poverty amongst disabled people<sup>10</sup> means that they will find it harder to support themselves through a financial emergency.<sup>11</sup> The high levels of disabled people living in poverty are due to a combination of factors including the extra cost of having a disability,<sup>12</sup> as well as unequal access to work,<sup>13</sup> and inadequate welfare support. Disabled people are also, at every level of qualification, more likely than non-disabled people to receive lower pay.<sup>14</sup> A duty on public authorities to consider socio-economic disadvantage has clear implications for the better realisation of the rights of disabled people in the UK through the consideration of the particular factors that occur for this protected characteristic.

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*“23. The Committee recommends that the State party bring into force the relevant provisions of the Equality Act that refer to the public authorities’ duty with respect to socio economic disadvantage, as well as with respect to the prohibition of intersectional discrimination, in order to enhance and guarantee full and effective protection against discrimination in the enjoyment of economic, social and cultural rights. The Committee recalls its previous recommendation (see E/C.12/GBR/CO/5, para. 16) and urges the State party to provide the same access to an independent equality body and a similar level of protection to rights holders with regard to all grounds of discrimination for all individuals in all jurisdictions of the State party, including Northern Ireland. In this respect, the Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.”*

<sup>8</sup> Article 28, UNCRPD

<sup>9</sup> JRF (2020) UK Poverty 2019/2020 <https://www.jrf.org.uk/report/uk-poverty-2019-20>

<sup>10</sup> The issue of the disproportionate number of disabled people living in poverty in the UK was raised by the CESCR in 2016 in its Concluding Observations,

*“48. The Committee recommends that the State party take steps to introduce measures to guarantee targeted support to all those living in poverty or at risk of poverty, in particular persons with disabilities, persons belonging to ethnic, religious or other minorities, single-parent families and families with children, and adopt an anti-poverty strategy in Northern Ireland. The Committee also urge s the State party to develop a comprehensive child poverty strategy and reinstate the targets and reporting duties on child poverty. In that regard, the Committee draws the attention of the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10).”*

<sup>11</sup> Scottish Independent Living Coalition (SILC) of Disabled People’s Organisations (2020) Call for immediate action: Disabled people’s human rights to life and health under threat

[http://gda.scot//content/publications/SILC-Statement-on-NHS-and-rights-of-Disabled-People\\_17.04.20.pdf](http://gda.scot//content/publications/SILC-Statement-on-NHS-and-rights-of-Disabled-People_17.04.20.pdf)

<sup>12</sup> Scope (2019) Disability Price Tag <https://www.scope.org.uk/campaigns/extra-costs/disability-price-tag/>

<sup>13</sup> House of Commons Library Briefing (2020) People with disabilities in employment

<https://commonslibrary.parliament.uk/research-briefings/cbp-7540/>

In addition, in 2016 CESCR highlighted this issue in their Concluding Observations to the UK, stating,

*“30. Recalling its previous recommendations (see E/C.12/GBR/CO/5, para s. 20 and 21), the Committee recommends that the State party review its employment policies to address the root causes of unemployment and include in its action plan time-bound goals with a specific focus on groups disproportionately affected by unemployment, such as young people, persons with disabilities and persons belonging to ethnic, religious or other minorities.”*

<sup>14</sup> Institute of Health Equity (2020) Health Equity in the UK: Marmot Review 10 years on

<https://www.health.org.uk/publications/reports/the-marmot-review-10-years-on>

13. Indeed, research undertaken by the Equality and Human Rights Commission into the implementation of the socio-economic duty in Scotland and Wales highlights that public bodies in Wales identified, “*lack of employment opportunities, housing and health inequality among disabled people,*”<sup>15</sup> as a key priority area to be addressed under the duty.

**14. *The Committee may wish to recommend that the UK government enacts the Equality Act 2010 to its full extent without delay, in particular the socio-economic duty, as recommended by other UN Committees and ensure the introduction of a single equality bill for Northern Ireland.***

### **The accelerated use of online services during the COVID-19 pandemic and the rights of disabled people**

15. Disabled people in the UK have been disproportionately impacted by the “digital divide”, which has been exacerbated by the COVID-19 pandemic. Due to the digital divide, disabled people across the UK have been experiencing a number of violations of their rights, including their right to protection from non-discrimination.<sup>16</sup>

16. Disabled people make up a large proportion of adult non internet users meaning they will be disproportionately face difficulties in accessing information, following online schooling, working from home, and purchasing groceries online.<sup>17</sup> All of this has implications for the realisation of rights within UNCRPD.<sup>18</sup> According to a recent survey by the Glasgow Disability Alliance, only 37% of their members have home broadband, and for those who do have it they may lack the skills or confidence to use the internet.<sup>19</sup> The EHRC reports that a “wide gap in internet usage between disabled and non-disabled people has persisted”.<sup>20</sup> In addition, it should be noted that while digital exclusion is a national issue, it has a regional face. For example, Better ConNEcted

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<sup>15</sup> Equality and Human Rights Commission, ‘Evaluating the socio-economic duty in England and Wales’, March 2021, p.43

<sup>16</sup> The UK has voluntarily agreed to the legal obligation to prohibit or condemn direct and indirect forms of discrimination. These obligations are in the following international human rights agreements: the Convention on the Elimination of All Forms of Discrimination against Women (Article 1), the International Covenant on Economic, Social and Cultural Rights (Article 2(2)), the Convention on the Rights of Persons with Disabilities (Article 2) and the International Covenant on Civil and Political Rights (Article 4(1)). The principle of non-discrimination is also in regional human rights law such as the European Convention on Human Rights (Article 14), and domestic human rights law such as the Equality Act 2010

<sup>17</sup> ONS (2019) Internet users, UK: 2019

<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>

<sup>18</sup> Including Article 9 – Accessibility, Article 19 - Living independently and being included in the community, Article 21 - Freedom of expression and opinion, and access to information, Article 23 - Respect for home and the family, Article 24 – Education, Article 25 – Health, Article 27 - Work and employment, Article 28 - Adequate standard of living and social protection, Article 29 - Participation in political and public life, and Article 30 - Participation in cultural life, recreation, leisure and sport

<sup>19</sup> Glasgow Disability Alliance, ‘COVID-19 supercharges existing inequalities faced by Glasgow’s 150,000 disabled people’ (28 April 2020) <http://gda.scot/our-community/news/2020/4/28/covid-19-supercharges-existing-inequalities-faced-by-glasgows-150-000-disabled-people>

<sup>20</sup> EHRC, ‘Being disabled in Britain: A journey less equal’ (3 April 2017)

<https://www.equalityhumanrights.com/sites/default/files/being-disabled-in-britain.pdf>

note that the North East of England has the highest proportion of internet non-users in the country, standing at 12.1% for the region in 2018.<sup>21</sup>

17. The move to online learning during the COVID-19 pandemic is another issue that has disproportionate impacts for disabled people. Research by ALLFIE shows that some disabled students, because of their impairments and health conditions, may not be able to participate in learning without accessing therapeutic interventions, the use of learning mentors, specialist teaching, and communication facilitation. In addition, schools represent a site of more than just education for some disabled children and young people. For instance, without physiotherapy and occupational therapy, which can be delivered in the school setting, for many disabled students their physical health deteriorates.<sup>22</sup> ALLFIE reports that as a result of the Children and Families Act's S(42) easement, many disabled students are without education support. Whilst the COVID-19 guidance suggested therapy sessions ought to be provided via Zoom and other virtual platforms, ALLFIE has found that local authorities had made no effort to secure online or other SEND provision for disabled students with education, health and care plans (EHCPs) once the Secretary of State for Education gave notification at the beginning of May.<sup>23</sup>
18. There is however evidence that some aspects of an accelerated move to an online sphere have helped to realise the rights of disabled people in the UK. These gains must be learned from and built upon.
19. Difference North East found that the COVID-19 pandemic has brought benefits for some disabled people. Greater use of technology has helped to connect and support some people who would normally have found it difficult to engage in particular activities.<sup>24</sup> Some disabled people have benefitted from a new level of community support, with many examples of help provided by local people. Some voluntary, community and social enterprise (VCSE) organisations have found great value in providing online support. They have been able to reach some service users who would not normally have been reached through traditional methods. VCSE organisations have shown great agility and innovation in responding to their service users' needs during a hugely difficult time.<sup>25</sup>
20. Difference North East also found that in many cases, disabled workers are benefitting from the increased flexibility offered by working from home arrangements. This helps some disabled people to balance work, health, and caring needs. Disabled people often live with conditions

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<sup>21</sup> 'Local Authority Briefing on Digital Inclusion', Better ConNEcted, [https://4a76708f-a1a4-410f-b467-4623329c3481.filesusr.com/ugd/a73b2d\\_6a663a8699d24e0898e890798c1275a2.pdf](https://4a76708f-a1a4-410f-b467-4623329c3481.filesusr.com/ugd/a73b2d_6a663a8699d24e0898e890798c1275a2.pdf)

<sup>22</sup> Just Fair, 'Just Fair's Evidence to the House of Lords COVID-19 Committee inquiry 'Living online: the long-term impact on wellbeing' (2020) <https://justfair.org.uk/wp-content/uploads/2021/01/House-of-Lords-COVID-19-Committee-Submission-on-Digital-Technology-and-Wellbeing-Submitted-by-Just-Fair-091220.pdf> and ALLFIE, 'Submission to the Women and Equalities Committee Inquiry: Unequal impact? Coronavirus, disability and access to services' (2020) [Submission to the Women and Equalities Committee Inquiry: Unequal impact? Coronavirus, disability and access to services - Allfie](https://www.allfie.org.uk/wp-content/uploads/2020/09/Submission-to-the-Women-and-Equalities-Committee-Inquiry-UNEQUAL-IMPACT-Coronavirus-disability-and-access-to-services-Allfie.pdf)

<sup>23</sup> *Ibid.*

<sup>24</sup> Helping to realise rights contained within UNCRPD including Article 29 - Participation in political and public life, and Article 30 - Participation in cultural life, recreation, leisure and sport

<sup>25</sup> 'Manifesto for a Better Normal', Difference North East, <https://differencenortheast.org.uk/wp-content/uploads/2020/09/Manifesto-Full-Report.pdf>

which cause fatigue, pain, and discomfort. Being able to work flexibly at times when the individual feels more able to work is of great benefit to some disabled workers. Working from home has allowed some disabled workers to manage self-care more easily, in the privacy of their own homes. Difference North East finds that increased homeworking and flexible working arrangements have been a positive benefit to some disabled workers.<sup>26</sup> This clearly shows that in some ways a digital world offers better realisation of UNCRPD Article 27 (Work and Employment) for some disabled people.

21. Disabled people are not a homogenous group. The COVID-19 pandemic, and the accelerated move to the online delivery of services has had both benefits and detriments in relation to the realisation of the rights of disabled people. There needs to be support from the UK Government to get those who want to access services digitally online, however there are some services which cannot be replicated online, and the UK Government must ensure that appropriate mitigations are put in place to ensure no diminution of rights of disabled people in a world that moves increasingly online. Positive outcomes must be built upon and at all times the voices of disabled people must be key to new policies and laws.

**22. *The Committee may wish to recommend that the UK Government reflect carefully on the implications of the accelerated use of online services during the COVID-19 pandemic for the rights of disabled people and ensure that good work is built upon, errors corrected and that at all stages disabled people are involved in decision-making that impacts their lives.***

### **Maintaining the current realisation of human rights and equality protections**

23. Article 4(2) of the UNCRPD makes it clear that the concept of progressive realisation is an obligation on the UK Government in relation to the Economic, Social and Cultural rights contained therein.<sup>27</sup>

24. While we call for progress in terms of the better realisation of rights, we must also express our deep concern about maintaining the current standard of human rights and equality protections in the United Kingdom. We believe that two separate and overarching issues present a clear threat to the current enjoyment of rights under UNCRPD, namely:

- Plans that could undermine or indeed scrap the Human Rights Act 1998 (HRA)
- the impact of the UK's exit from the European Union on the human rights and equalities enjoyed by disabled people in the UK.

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<sup>26</sup> *Ibid.*

<sup>27</sup> Article 4(2) UNCRPD: “With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.”

## The Human Rights Act 1998

25. The UK Government is currently undertaking a review of the Human Rights Act,<sup>28</sup> which will examine the following:
- *the relationship between domestic courts and the European Court of Human Rights (ECtHR)*
  - *the impact of the HRA on the relationship between the judiciary, the executive, and the legislature*
26. While the terms of reference for the current review are limited, we remain concerned about intentions of the UK Government to roll back rights. The current UK Government was elected with the following commitment in their manifesto:
27. *“We will update the Human Rights Act and administrative law to ensure that there is a proper balance between the rights of individuals, our vital national security and effective government.” Conservative Party Manifesto 2019.*
28. The Human Rights Act gave further effect to many of the rights from the European Convention of Human Rights (ECHR) in domestic legislation across the UK and allowed access to UK courts for violations of Convention rights. In February 2021 Just Fair made a [written submission](#) to the Joint Committee on Human Rights’ Inquiry into the Independent Review of the Human Rights Act. The submission made it clear that the HRA is an important pillar of the UK constitution providing a framework for individuals beyond the limited rights available under the common law system and uncodified constitution.
29. In the absence of the domestic implementation of the UNCRPD, the HRA has acted as an important safeguard for the rights of disabled people in the UK, particularly in relation to Article 6 (fair trial),<sup>29</sup> Article 8 (private and family life),<sup>30</sup> and Article 14 (freedom from discrimination).<sup>31</sup>
30. Concern over the future of the HRA has been communicated by a number of UN human rights monitoring mechanisms in recent years including:
- *“Ensure that any legislation passed in lieu of the Human Rights Act 1998 — were such legislation to be passed — is aimed at strengthening the status of international human rights, including the provisions of the Covenant, in the domestic legal order, and provide effective protection of those rights across all jurisdictions.” Human Rights Committee, August 2015<sup>32</sup>*
  - *“The Committee recommends that the State party undertake a broad public consultation on its plan to repeal the Human Rights Act 1998 as well as on the proposal for a new bill of rights. It also recommends that the State party take all necessary measures to ensure that any new legislation in this regard is aimed at enhancing the status of human rights, including economic, social and cultural rights, in the domestic legal order and that it*

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<sup>28</sup> Human Rights Act 1998, available here: <https://www.legislation.gov.uk/ukpga/1998/42/contents>

<sup>29</sup> E.g., [Re H \(A Child\) \[2015\] EWCA Civ 1284](#)

<sup>30</sup> E.g., [R v North and East Devon Health Authority ex p Coughlan \[1999\]](#)

<sup>31</sup> E.g., [RF v Secretary of State for Department of Work and Pensions \(2017\)](#)

<sup>32</sup> Human Rights Committee, [‘Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland’](#), 17 August 2015

*provide effective protection of those rights across all jurisdictions of the State party.” Committee on Economic, Social and Cultural Rights, July 2016<sup>33</sup>*

- *“The Committee is concerned that the proposal to replace the Human Rights Act of 1998 with a new British Bill of Rights may lead to decreased levels of human rights protection in the State party, which would negatively affect the situation of individuals protected under article 1 of the Convention...The Committee recommends that the State party undertake meaningful and broad public consultation on its proposal to revise its human rights legislation and ensure that any changes to the current human rights framework strengthens the protection of human rights, and in particular the rights of individuals protected under article 1 of the Convention.” Committee on the Elimination of Racial Discrimination, August 2016<sup>34</sup>*
- *“Make sure that, in case the proposals for a British Bill of Rights are realized, the current level of human rights protection provided by the Human Rights Act of 1998 is maintained and improved.” Ukraine, Universal Periodic Review, May 2017<sup>35</sup>*

### **Recommendation**

**31. The Committee may wish to recommend that any work done to alter the HRA, must build upon and enhance the protections therein (including by bringing into force a freestanding right to freedom from discrimination). Nothing should be done to in any way undermine the HRA, its operation, or the rights contained within it.**

**The impact of the UK’s exit from the European Union on the human rights and equalities enjoyed by disabled people in the UK.**

32. On 31 January 2020 the United Kingdom exited the European Union. The EU is of course a signatory to the UNCRPD in its own right<sup>36</sup> and has declared that, in all its law-making and policy development, it will give effect to the rights in UNCRPD.<sup>37</sup>

33. Disabled people living in the UK have expressed concerns as far back as 2017 that the UK exit from the EU will impact on their human rights and equality standards.<sup>38</sup> Indeed in 2017 UNCRPD made the following Concluding Recommendation in relation to the UK,

*“7(f) Prevent any negative consequences for persons with disabilities resulting from the decision to trigger article 50 of the Treaty on European Union, in close consultation with organizations of persons with disabilities.”*

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<sup>33</sup> Committee on Economic, Social and Cultural Rights, [‘Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland’](#), 14 July 2016

<sup>34</sup> Committee on the Elimination of Racial Discrimination, [‘Concluding observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland’](#), 3 October 2016

<sup>35</sup> [Report of the Working Group on the Universal Periodic Review](#), United Kingdom of Great Britain and Northern Ireland, 14 July 2017

<sup>36</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en)

<sup>37</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en#EndDec)

<sup>38</sup> [‘Exiting the EU - Concerns for Disabled People in Northern Ireland’](#) Disability Action, March 2017 and [‘Brexit Manifesto’](#), Disability Rights, June 2017

34. In relation to protections under EU law, there have unfortunately already been negative consequences, including regressions and the loss of opportunity to keep pace with emerging EU law developments. The **Court of Justice of the European Union (CJEU)** has been instrumental in driving forward domestic legislation in the UK to a more substantive application of equality and human rights for disabled people.<sup>39</sup> As Just Fair noted in January 2021 in [joint work](#) with Equally Ours, the EU (Withdrawal) Act 2018 did include an amendment that UK courts and tribunals could ‘have regard to’ its case law, but that it will no longer be on a statutory footing. CJEU rulings/case law can now also be challenged in the UK courts, and these can help unpick the existing laws on these rights and standards if the challenge is found favourable.
35. Indeed, the loss of statutory footing of caselaw from the CJEU and the loss of the **Charter of Fundamental Rights of the European Union** (the Charter) were drawn as red lines by the UK in its White Paper on the Repeal Bill in March 2017.<sup>40</sup>
36. The Charter brings together the fundamental rights of everyone living in the EU, including the rights protected by the ECHR,<sup>41</sup> the constitutional traditions of the Member States, and the rights contained in other international conventions to which the EU or its Member States are parties. Unlike the Human Rights Act, the Charter contains a free-standing right to prohibition of discrimination.<sup>42</sup> The Charter reflects the indivisibility of civil, political, economic, and social rights. Title V (Solidarity) for example provides protections for a number of ESC rights including collective bargaining and action,<sup>43</sup> fair and just working conditions,<sup>44</sup> prohibition of child labour and protection of young people at work,<sup>45</sup> social security and social assistance,<sup>46</sup> and healthcare.<sup>47</sup> Article 26 of the Charter, entitled, ‘Integration of persons with disabilities’, states, *“The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.”*<sup>48</sup> This clarifies that the rights of disabled people are a core priority in the realisation of the Charter.
37. As noted by Disability Action, many examples of the protections disabled people currently enjoy in the UK are thanks in no small part to legislation and policies introduced by the EU, including actions by the CJEU and the scope of the Charter, as noted above, but also through **landmark directives** including the Framework Directive for Equal Treatment in Employment and

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<sup>39</sup> Such as making indirect discrimination unlawful, recognising associative discrimination, and protecting access to disability benefits. For more information see for example [‘Exiting the EU - Concerns for Disabled People in Northern Ireland’](#) Disability Action, March 2017 and [‘Rights at Risk: Brexit, Human Rights and Northern Ireland’](#), Human Rights Consortium, January 2018

<sup>40</sup> Department for Exiting the European Union, ‘The Repeal Bill: White Paper’, Cm 9446 (March 2017), <https://bit.ly/3d6mETP> particularly para 2.3 on the ECJ and 2.23 on the Charter

<sup>41</sup> Article 52(3) of the Charter clarifies that the ECHR is a floor not a ceiling, so rights protections may be more extensive under the Charter than in the ECHR, but must not fall below it

<sup>42</sup> Article 21

<sup>43</sup> Article 28

<sup>44</sup> Article 31

<sup>45</sup> Article 32

<sup>46</sup> Article 34

<sup>47</sup> Article 35

<sup>48</sup> [Article 26 of the Charter of Fundamental Rights of the European Union](#)

Occupation in 2000. This set out to protect individuals in employment against direct and indirect discrimination on account of race, sexual orientation, religion and disability.<sup>49</sup>

38. We are now in a more perilous situation in relation to rights and equalities protections, as noted by Murray, O'Donoghue and Warwick, *"The UK Parliament will be able post Brexit to alter any retained EU law by standard processes of law making, and thereby diminish rights protections."*<sup>50</sup>
39. We are already falling behind the EU in terms of the realisation of the rights of disabled people in the UK. An example of this is the [European Accessibility Act 2019](#), which will not be implemented in the UK.<sup>51</sup> The act covers products and services identified as being most important to disabled people including:
- computers and operating systems
  - ATMs, ticketing and check-in machines
  - smartphones
  - TV equipment related to digital television services
  - telephony services and related equipment
  - access to audio-visual media services such as television broadcast and related consumer equipment
  - services related to air, bus, rail and waterborne passenger transport
  - banking services
  - e-books
  - e-commerce
40. Finally, the [Human Rights Tracker](#) (a tool designed and managed by the EHRC) has deemed that there has been 'regression' in relation to 'Equality and Human Rights Legal Framework' in the UK. This is attributed in part to Brexit, and the tracker includes the following evidence:
- The [European Union \(Withdrawal\) Act 2018](#) excludes the [EU Charter of Fundamental Rights](#) from domestic law, [resulting in the loss of some rights protections](#), including the freestanding right to equality of treatment. We are concerned that the loss of some of these rights will make it harder for individuals to enforce their fundamental rights.
  - There are concerns about the [potential impact of the loss of EU funding](#) for projects that have implications for human rights.<sup>52</sup>

### **Recommendation**

- 41. The Committee may wish to ask the UK Government to ensure that there is no further loss of rights and equalities protections for disabled people as a result of the UK's exit from the EU. In addition, the UK should ensure that it remains a world leader in terms of the protections of the**

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<sup>49</sup> [Exiting the EU - Concerns for Disabled People in Northern Ireland](#) Disability Action, March 2017

<sup>50</sup> Murray, C., O'Donoghue, A. and Warwick, B., 'Discussion Paper on Brexit' (NIHRC, IHREC, 2018), p.16, available [here](#)

<sup>51</sup> See UK Government response to Parliamentary questions on 12 March 2020: <https://questions-statements.parliament.uk/written-questions/detail/2020-03-09/26878>

<sup>52</sup> [Human Rights Tracker](#), accessed 12 November 2021

***rights and equalities of disabled people, including by taking steps to implement the rights within UNCRPD in domestic legislation across the UK.***