

## REPLY BY THE GOVERNMENT TO THE TWENTY-THIRD REPORT OF THE JOINT COMMITTEE ON HUMAN RIGHTS SESSION 2010-12: IMPLEMENTATION OF THE RIGHT OF DISABLED PEOPLE TO INDEPENDENT LIVING

### Introduction

This memorandum sets out the Government's response to the conclusions and recommendations in the Joint Select Committee's report, *Implementation of the Right of Disabled People to the Independent Living*.

The Government welcomes the report as an important and timely contribution to discussion about implementation of the United Nations Convention on the Rights of Disabled People (the Convention') and the development of a new Disability Strategy.

It also welcomes the Committee's acknowledgement that this Government is committed to removing barriers and creating opportunities for disabled people, and that the UK is a world-leader on disability rights and in relation to independent living in particular.

Disabled people make a huge contribution to society – through work, volunteering, caring and as active members of communities. However, there remain significant physical and attitudinal barriers that prevent disabled people from reaching their full potential and playing their role in society.

The Government is committed to tackling these barriers and to enabling disabled people to have opportunities to play a full role in society. The Government has been working with disabled people to develop a new Disability Strategy that will build on the UK's long standing commitment to independent living and equality for disabled people.

The Government wants to realise the aim of independent living, where "all disabled people have the same choice, control and freedom as any other citizen – at home, at work, and as members of the community. This does not necessarily mean disabled people 'doing everything for themselves', but it does mean that any practical assistance people need should be based on their own choices and aspirations".<sup>1</sup>

To take this forward, the Government is working to frame a new Disability Strategy. The aim of the Strategy is to give renewed impetus to our commitment to enabling disabled people to fulfil their potential and have opportunities to play a full role in society. It will focus the need for continued action across government and externally. It will be based around three themes:

**Realising Aspirations:** disabled people must have the opportunities and support they need to realise their potential and their aspirations for education, work and independent living, particularly during key life transitions.

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<sup>1</sup> Definition developed by disabled people. Disability Rights Commission, 2002, Policy Statement on Social Care and Independent Living.

**Individual control:** disabled people must have the opportunity to make their own choices to live independently, with choice and control in their daily lives.  
**Changing attitudes and behaviours:** discrimination and harassment are unacceptable. We must grow strong and positive attitudes and behaviours towards disabled people to enable their full participation in work, family and community life

The Government is committed to working with disabled people and their organisations on the development of the Disability Strategy. In December 2011, the Office for Disability Issues (ODI) at the Department for Work and Pensions published a discussion document - *Fulfilling Potential* – as the basis for discussions and has worked with disabled people to explore how the Strategy can be developed and what actions will be both realistic and can have the greatest impact.

The discussion period ended on 9 March. Huge interest was shown in the document. The ODI received 548 written responses from organisations and individuals. In addition, the Government provided funding for around 100 events held by disabled people's organisations around the country to enable disabled people to discuss their ideas around *Fulfilling Potential*. Overall more than 5,000 disabled people have taken the opportunity to help shape the new strategy.

In the light of all the responses received, work is in progress on the Strategy, which the Government will publish later this year. The Committee's report makes a number of recommendations about the approach that the Strategy should take, and these are being considered as part of that work.

The context in which we are developing the Disability Strategy is a challenging one and must recognise the reality of the current fiscal environment. Nonetheless, the Government is committed to tackling the barriers that may prevent disabled people from participation in society as equal partners. The Strategy will reflect the Government's fundamental reform programme that will create a new welfare system for the 21<sup>st</sup> century. This will transform the opportunity for people without jobs to find work and support themselves and their families, and will ensure that the most vulnerable in society are protected. Disabled people are at the heart of this ambition, which recognises that support for disabled people must not mean a life of welfare dependency, but must enable everyone to take an equal role in society. The Strategy will also reflect the move away from traditional top-down direction from central government towards a flexible approach and a greater emphasis on localism, which enables decisions to be responsive to the real needs of local communities, including disabled people.

As the Committee's report acknowledges, the devolved administrations have their own strategic approaches to the achievement of independent living for disabled people, and to implementation of the UN Convention on the Rights of Disabled People. The Disability Strategy will therefore primarily be for England, but with some policies applicable to the UK as a whole.

## **The legal status of the relevant standards in the Disabilities Convention**

**1. We are concerned that characterising the obligations assumed by the Government under the Disabilities Convention as “soft law” is indicative of an approach to the treaty which regards the rights it protects as being of less normative force than those contained in other human rights instruments. The UNCRPD is hard law, not soft law. The Government should fulfil their obligations under the Convention on that basis, and must counter the public perception that it is soft law.**

The Government recognises that the Convention is a legally binding instrument, and has made it clear that it is committed to its implementation. The evidence given to the Committee was intended to make the distinction that international treaties are generally not incorporated into UK domestic law. The Convention imposes legal obligations on the UK Government. The UK fulfils these obligations through existing domestic legislation, such as the Equality Act 2010, and through policy and programmes that impact upon the lives of disabled people. In this way, the rights contained in the Convention have practical effect.

## **Progress so far**

**2. We welcome the Government’s continued commitment to removing barriers and creating opportunities for disabled people, and consider this to be entirely consistent with their obligations under Article 19 UNCRPD. The UK has an established position as a world-leader on disability rights and in relation to independent living in particular. We strongly encourage the Government to make every effort to maintain and build upon this status.**

The Government welcomes the Committee’s recognition of its commitment to removing the barriers that disabled people face, and of the position that the UK has established as a world-leader on disability rights. The Government aims to build on the strong foundations that exist with a new Disability Strategy, co-produced by disabled people, and a programme of reform across welfare, education, employment support and social care to make the state system work better for disabled people.

## **The current situation**

**3. We note the significant disadvantage to disabled people which persists in relation to choice and control and levels of participation in economic and social life and the impact this has on their economic and social well-being, and on what many of our witnesses considered to be their enjoyment of basic human rights. We therefore welcome the Government’s recognition that more progress is required to promote disabled people’s right to independent living.**

The new Disability Strategy will be based around three themes:

1. Realising Aspirations: disabled people must have the opportunities and support they need to realise their potential and their aspirations for education, work and independent living, particularly during key life transitions.
2. Individual control: disabled people must have the opportunity to make their own choices to live independently, with choice and control in their daily lives.
3. Changing attitudes and behaviours: Discrimination and harassment are unacceptable. We must grow strong and positive attitudes and behaviours towards disabled people to enable their full participation in work, family and community life

The Disability Strategy will build upon the UK's long-standing commitment to independent living and aim to ensure all disabled people have the opportunities to fulfil their potential.

**4. The Government should continue their commitment to delivering independent living by ensuring that the forthcoming Disability Strategy sets out a clear plan of action to make progress with regard to independent living as defined by Article 19, with milestones and monitoring mechanisms. The Disability Strategy should build on and update the outcomes framework set out in the current Independent Living Strategy.**

The Government agrees that the Disability Strategy should build on previous strategic thinking, including the Independent Living Strategy, the 2005 Life Chances report, the Roadmap 2025, and the Government's commitment to the UN Convention on the Rights of Disabled People. The Strategy will restate the Government's continuing commitment to enable disabled people to make their own choices and have the right opportunities to live independently. One of the three themes around which it will be framed is Individual Control. This will focus on enabling disabled people to make their own choices and ensuring that they have the right opportunities to live independently. The Strategy will set out actions to be taken across Government.

The Government agrees with the Committee about the importance of monitoring the impact of the Disability Strategy. As part of the work being undertaken by the Office for Disability Issues (ODI) within the Department for Work and Pensions, which is developing the Strategy for Government, it is looking at how to achieve this, through various means, including for example, gathering information on the lived experience of disabled people.

#### **Legislative underpinning of the right to independent living**

**5. The Right to Control is a welcome step towards establishing independent living as a right. If the evaluation of the "Right to Control**

**Trailblazers” is positive, the Government should make regulations to roll out the scheme nationwide in both social care and primary health care.**

The evaluation of the Right to Control Trailblazers will be published in the spring of 2013. A final decision on the future of Right to Control will be made when all the evidence has been received and considered.

**6. We note that while the UK has made progress in developing a rights-based approach to the design and delivery of public service support to disabled people, disabled people in the UK do not enjoy a right to independent living in domestic law.**

As the Committee notes in Conclusion 7, there is already an existing matrix of legislation which protects and promotes the rights of disabled people and which helps deliver independent living. The foundation is the Equality Act which – through the requirement for public bodies to take account of the needs of disabled people - is the key legislative vehicle for delivery of the obligations of the Convention, including independent living. The Government believes the right approach is to ensure that disabled people have the personalised outcome focused support and services they need to live independently, and is committed to working with disabled people and their organisations to achieve that. The new Disability Strategy will be outcome-focused and based on the principles of independent living as described by disabled people themselves.

**7. We regret that the Convention has not been incorporated into UK law and no underpinning legislation exists specifically to protect and promote the right to independent living. While we consider the existing matrix of human rights, equality and community care law to be instrumental in the protection and promotion of the right to independent living, we do not consider it sufficient. The right to independent living (as defined by Article 19) should be added as an outcome in any forthcoming Bill on adult social care in England.**

The Department of Health is considering the Law Commission’s proposals in this area as part of its broader approach to law reform in social care. It has committed to responding formally to the Law Commission’s report in the soon to be published White Paper, and publishing a draft Bill in the coming session as per the recent Queen’s Speech. We still intend to legislate at the earliest opportunity. The Department thinks that a set of outcome-focused statutory principles will be an important element of the new legal framework for care and support, to act as a unifying purpose for the law. It is considering the best design for statutory principles to capture outcomes and assumptions and the best way to give effect to the concept of independent living in the law.

**8. We remain concerned, however, that merely filling in the gaps in the current legislative framework will still not accord the right to independent living the legal status that its fundamental importance deserves. We hope that the Commission on a Bill of Rights will consider the arguments for and against expressly recognising the right of**

**disabled people to independent living in any Bill of Rights for the UK. In the meantime, we recommend that all interested parties, governmental and nongovernmental, immediately start work on assessing the need for and feasibility of freestanding legislation to give more concrete effect in UK law to the right to independent living.**

The Commission on the Bill of Rights is independent of Government and therefore will decide for itself how it discharges its wide-ranging terms of reference. It is clear from the Commission's published minutes that it is considering a wide range of options, including the possibility of adding additional rights to those already protected in law in the UK. However, it is also clear that it has not yet reached final conclusions on any of those options or on the central question of whether a case for a UK Bill of Rights has been made. In line with its terms of reference, the Commission should aim to report no later than the end of 2012. As set out in the written Ministerial statement announcing its establishment, the Commission will report to the Justice Secretary and the Deputy Prime Minister.

**9. We recommend that the Government publish their assessment of the need for and desirability of such free standing legislation implementing the right to independent living in the light of the forthcoming first report of the UN Committee on Disabilities following its scrutiny of the UK's first compliance report.**

The Government submitted the first UK report on implementation of the Convention to the UN Committee on the Rights of Persons with Disabilities in November 2011. When the Committee has considered that Report and made any recommendations, the Government will consider very carefully how to respond, including in respect of any recommendations made for implementation of Article 19.

### **Protecting and promoting the right to independent living**

**10. The nature of independent living strongly suggests the need for coordinated strategy and action at the national and local level, both cross-departmentally, between the different levels of government, and with non-governmental actors, and for careful consideration of both the independent and cumulative impacts of policy and legislative reform and public spending decisions.**

The new cross-government Disability Strategy will aim to provide a coherent and joined up approach to removing barriers and creating opportunities for disabled people. As has been described under recommendation 3 above, the Strategy will frame the approach around three overall themes, whilst recognising that delivery of services for disabled people and the decisions that affect them may be made at local level. This overarching approach does not mean that the Government will be prescriptive or directive regarding how local authorities deliver their statutory duties. The Government is committed to strengthening local accountability. Localism is an essential policy to drive forward policies to increase the personalisation of support and enable greater

flexibility in the delivery of services so that they are responsive to local needs rather than national targets.

In developing the Strategy, the Government is looking at how progress can be monitored at national and local level, and is involving disabled people in those discussions. The Strategy will be a living document that will continue to develop as progress is made, and to reflect changing circumstances and priorities.

**11. We recommend that the Government consider provision of the means to independent living in the round. The complex interconnections between services and benefits mean that changes to one service or benefit may have unintended consequences for another—and for the overall level of outcomes achieved. For instance, changes to housing provision may have significant impacts on the accessibility of healthcare, transport, support networks and other rights and opportunities.**

The Government agrees that nature of independent living is complex, and that individual disabled people will have different expectations and aspirations towards independence in their lives. The new Disability Strategy therefore will have as one of its three themes focused on Individual Control, which aims to enable disabled people to make their own choices and have the right opportunities to live independently. Work around the other two themes – Realising aspirations and Changing attitudes and behaviours is also relevant (recommendation 3 above refers). The Disability Strategy will draw the links between different actions so that dependencies and key transition points are clear. The Strategy will take a holistic approach and address achievement of independent living from the perspective of a disabled person.

### **Independent Living Strategy: its effectiveness, and plans for the Future**

**12. We welcome the commitment made by the Minister for Disabled People that the UNCRPD will provide the basis of the forthcoming Disability Strategy. We expect the Disability Strategy to be robust, targeted and deliverable, and co-produced with disabled people. It should cover all aspects of the Convention, including the right to independent living, and be specific in terms of how it delivers the Convention articles in order to aid measurement and transparency. The implementation process should include clear milestones, monitored by an independent body.**

The Government's new Disability Strategy will take the Convention as its basis, and will build on progress made to date. The Government agrees that the Strategy should be robust, targeted and deliverable. The Strategy will focus on actions that are realistic and will have the most impact. It will reflect what disabled people themselves have said are the important issues through the discussions around *Fulfilling Potential*.

The Government agrees that ongoing monitoring of the Strategy is an important issue. The Strategy will be a living document that will evolve over time to reflect progress made, and the development of new actions and policy directions. In the discussions around *Fulfilling Potential*, the Office for Disability Issues (ODI) has asked disabled people for their views on how they think delivery of the Strategy should be monitored, and how they can be involved in this so that their voice is heard. The ODI also intends to ensure it gathers the data needed to allow progress to be measured, and will, for example, capture first hand the lived experiences of disabled people to inform an understanding of what impact the Strategy is having.

### **Coordinating implementation of the Convention across government departments and the devolved administrations**

**13. While we acknowledge that the Government should not seek to direct the devolved authorities or local authorities in the exercise of their powers, the UK Government should acknowledge their responsibilities under the Convention to ensure its implementation across the whole of the UK. Ultimately, the repercussions of any breach of the Convention will rest with the UK Government.**

The UK Government will ensure implementation of the Convention. As the first UK report to the UN Committee on the Rights of Persons with Disabilities explains, most of the areas that the Convention covers are devolved, and the devolved administrations are therefore developing their own strategic responses to it in the light of their own assessment of needs, resources and priorities. In line with the spirit of the devolution settlements and the Sewel Convention, the UK Government will not seek to impose detailed requirements on the devolved administrations in this regard

The obligations of the Convention are fulfilled through existing UK legislation. At local level, this means that local authorities will already be taking the needs of disabled people into account. The public sector Equality Duty means that local authorities must have 'due regard' to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. To have 'due regard' a local authority will consider the effect its policies will have on equality for disabled people.

The Government is not prescriptive or directive regarding how local authorities deliver their statutory duties and is committed to strengthening local accountability. Localism is an essential policy to drive forward policies to increase the personalisation of support and enable greater flexibility to delivery services that are responsive to local needs rather than national targets.

**14. We recommend that the Office for Disability Issues updates and expands upon its response to *Human rights of persons with disabilities: national frameworks for the promotion and protection of the rights of persons with disabilities*, explaining its approach to coordinating**

**implementation of the Convention across Whitehall, the devolved administrations, public authorities and other sectors. This could usefully be done in the context of the forthcoming Disability Strategy.**

The report to which the Committee refers was produced by the Office for Disability Issues (ODI) for the UK Government in response to a request from the Office of the UN High Commissioner for Human Rights, following a resolution of the UN Human Rights Council in 2009. The report describes the approach to national implementation and monitoring of the Convention required by Article 33. This was also described in the first UK Government report to the UN Committee on the Rights of Persons with Disabilities. The approach to national implementation and monitoring remains as described. The ODI acts as the focal point for UK Government, and England, and has regular meetings with the focal points in the devolved administrations to discuss Convention-related issues, including progress on the development of strategic responses to the Convention. These will continue. The Government will consider the need to provide further information on this in the light of work on the Disability Strategy.

#### **Implementation of the right to independent living by the devolved Administrations**

**15. We commend the Scottish Government and the Welsh Government for their respective plans to promote independent living. We note with disappointment the lack so far of an equivalent strategy in Northern Ireland. It is regrettable that the Northern Ireland Executive has not yet responded to the proposals of the PSI Working Group made in 2009.**

**16. The Northern Ireland Equality Act should be amended to address the effects of the House of Lords judgment in *Malcolm v Lewisham*, ensuring parity of protection between disabled people in Northern Ireland and Britain.**

The Government notes the Committee's points, which are for the devolved administrations in Northern Ireland, Scotland and Wales to consider.

#### **Ensuring that public authorities comply with the Convention**

**17. We are unclear how the Government are meeting their obligation to ensure compliance with the Convention by public authorities, especially in the light of localism and changes to specific duties in England under the Equality Act 2010.**

The Equality Act is the key legislative vehicle for delivery of the obligations of the Convention, although other legislation and a range of non-legislation measures are relevant also. The Equality Duty specifies duties, which the Committee referred to, are only part of this broad picture

The specific duties that support the Equality Duty are deliberately less prescriptive than those supporting the earlier race, gender and disability

duties. The Government believes that those earlier specific duties, which required the production of equality schemes, action plans, staff training schedules, annual reports, and so on, drove unproductive bureaucracy and a culture of box-ticking, rather than action to promote equality.

The Government announced on 15 May that is bringing forward the planned review of the specific duties and will broaden out the review to cover the general duty.

**18. The Government, led by the ODI, should work with others including the devolved administrations, the independent mechanisms, regulators and disabled people's organisations to promote awareness and understanding of the Convention among public authorities, especially local government, and to monitor its implementation.**

The Office for Disability Issues (ODI) has worked across Government and with the devolved administrations, the independent mechanism (the Equality Human Rights Commission, the Northern Ireland Human Rights Commission, the Equality Commission Northern Ireland and the Scottish Human Rights Commission) and with disabled people and their organisations, to raise awareness of the UN Convention. ODI will continue to explore how to raise awareness and understanding of the Convention with key stakeholders, including whether there is a need to raise awareness amongst public and local authorities, how that might be achieved and the role that Government and disabled people themselves can play in this.

The Disability Strategy will take the Convention as its basis and it will serve as the key vehicle to show how actions that support Convention rights are being taken. As part of the process of developing the Strategy, ODI is looking at how it will be supported by a monitoring process to measure the impact, and who should be involved in that in addition to Government. The devolved administrations will consider arrangements for monitoring their own strategic responses to the Convention on areas that are devolved. ODI and focal points in each of the devolved administrations meet regularly to discuss Convention-related issues, and this will continue.

### **Impact assessments**

**19. We are concerned that the UNCRPD, and Article 19 in particular, does not appear to have played a central role in the development of policy. Inadequate attention has been paid to the impact of relevant policy on the implementation of the UNCRPD, in contravention of Article 4(1) and 4(3). We recommend that the Government make a clear and unequivocal commitment to Parliament, equivalent to that which it has already given in relation to the UN Convention on the Rights of the Child, that they will give due consideration to the articles in the UN Disabilities Convention when making new policy and legislation, and in doing so will always consider relevant recommendations of the UN treaty monitoring bodies.**

The Government is committed to the implementation of the Convention, and recognises that policy reform and developments that will affect the lives of disabled people should help it take forward its obligations under the Convention. The Government will set out its approach when an announcement is made to Parliament on publication of the Disability Strategy.

The UK takes international obligations of this nature very seriously. If after scrutiny of the first UK Government report on implementation of the Convention that was submitted in November 2011, the UN Committee on the Rights of Persons with Disabilities makes recommendations in respect of UK policy and practice, the Government will consider these very carefully in order to make an appropriate response.

**20. However, if properly carried out, equality impact assessments provide an important mechanism through which to ensure policy achieves desired goals and avoids unintended consequences, and help to demonstrate transparency and accountability. We recommend that they should be produced early in the policymaking process with the full involvement of those likely to be affected by the policy.**

The Government is encouraging public bodies to consider equality issues at an early stage in policy development process, and to record that consideration in a proportionate and non-bureaucratic manner. The Government is concerned that equality impact assessments often become lengthy, bureaucratic, box-ticking documents, produced after key decisions have been taken, and are ineffective in terms of influencing policy development and promoting equality.

**21. Given the breadth of the current reforms, the Government should publish a unified assessment of the likely cumulative impact of the proposals on independent living, and set out any relevant mitigations through the Disability Strategy. The relevant strategies in the devolved administrations should also include such mitigation plans.**

The ability to undertake cumulative analysis is limited because of the complexity of the modelling required and the amount of detailed information on individuals and families that is required to estimate the interactions of a large number of different policy changes.

The Disability Strategy will be accompanied by a process to allow monitoring of progress at national and local level and which will draw on the lived experiences of disabled people. It will be a living document that will continue to develop as progress is made, and to reflect changing circumstances and priorities. It will be for the devolved administrations to consider their approaches in the light of their devolved responsibilities.

**22. We regret the exclusion from the English specific duties under the new Public Sector Equality Duty of the requirement to conduct equality impact assessments. The Government should either revise the duties accordingly, or promote equality impact assessments as a matter of**

**good practice, with the assistance of other expert bodies such as the Equality and Human Rights Commission, Scottish Human Rights Commission, Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission.**

The Government's position on the Equality Duty and impact assessments is set out above (recommendations 17 and 20 above refer).

**23. We welcome the willingness of the Secretary of State for Justice to consider the impact assessment methodology being developed by the Scottish Human Rights Commission and we look forward to the outcome of that consideration.**

In line with the Secretary of State for Justice's comments at his evidence session before the Committee on 20th December 2012, the Ministry of Justice has contacted the Scottish Human Rights Commission to start a dialogue about its work on a human rights impact assessment methodology and to see the lessons that might be learnt. As the Secretary of State for Justice also made clear in his response, the Ministry of Justice's further consideration of this work will be closely focused on the value it adds and avoiding another formal form filling requirement.

**24. Our evidence suggests that equality impact assessments have not played an important part in assessing the impact of recent policy on disabled people in the context of the UNCRPD, because of poor quality, or untimely, EIAs. There also appears to be some confusion over the requirement to conduct EIAs, which the Government should clarify.**

The Government agrees that poor quality, untimely equality impact assessments (EIAs) would be ineffective in influencing policy development. As recommendation 20 above notes, the Government is encouraging public bodies to consider equality issues earlier in the policy development process, and to record that consideration in a proportionate and non-bureaucratic manner. The Government has been consistently clear in its messaging that there is no statutory requirement to conduct or publish an Equality Impact Assessment.

**25. The Equality and Human Rights Commission, Scottish Human Rights Commission, Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission should monitor and publish an assessment of the degree to which due regard appears to have been paid to Article 19 in the most relevant policy developments and decisions in this Parliament. The findings should feed into the development of the Disability Strategy and relevant plans for each jurisdiction.**

This is an issue for the Commissions as part of their work as the independent monitoring mechanism for the Convention. The Government will welcome any contribution that they offer to discussions on the development of the Disability

Strategy, and hopes that the devolved administrations will be similarly responsive to the Commissions' engagement.

### **Consultation and involvement of disabled people**

**26. The UNCRPD specifically requires disabled people to be involved in the implementation of the Convention, and the Government have acknowledged the importance of such involvement. We recommend that the Government aim to involve disabled people in the development of policy, rather than simply consult them, and to ensure that timescales and methods are used which enable a full range of disabled people and their representative organisations to be involved.**

The Government believes that disabled people are experts in their own lives and is committed to their involvement in the development of policies that affect them. The Government has reflected this in the approach taken to the UK Government Report on implementation of the Convention and in the active co-production with disabled people of the new Disability Strategy, and in the process of development of welfare reforms such as Personal Independence Payment (PIP).

The Government has focused its approach to development of the Strategy around the discussion document *Fulfilling Potential*. This sets out three broad themes framed around the issues that disabled people have said are important to them. During the discussion period, the Government provided support to more than 60 organisations of disabled people to run over 100 events to reach out to disabled people and give them opportunity to shape the strategy. The Government did things differently precisely so that disabled people who would not normally take part in developing Government policy could get involved. To help them with that Government provided funding to a wide-range of organisations for expenses to assist them in running events involving disabled people. The Government estimates that through this approach, over 5000 disabled people have taken the opportunity to put forward practical ideas for making a real difference to their lives.

The Government's aim has been to get ideas from disabled people not just about the barriers that they may face, but their ideas on how those barriers can best be overcome and how they want to be involved in ongoing monitoring. The Disability Strategy, which is still being developed, will show how the Government captured and built on those ideas.

**27. We are disappointed that the English specific duties under Section 149 of the Equality Act no longer encourage the involvement of disabled people. This is a retrogressive step. The Government should actively promote involvement to public authorities as a means of meeting their Equality Duty and in order to comply with the UNCRPD.**

It is wrong to suggest that the Equality Duty or the specific duties do not encourage the involvement of disabled people. On the contrary, the guidance makes clear that involving relevant parties may be essential in some cases to

comply with the Equality Duty; and reporting that involvement may be necessary to comply with the specific duties. The Equality and Human Rights Commission has produced a detailed guide on this issue, *Engagement and the equality duty: A guide for public authorities*, and the Government has funded an online toolkit to help voluntary and community organisations to understand the Equality Duty and engage with public bodies about it.

### **Awareness of the UNCRPD**

**28. Our evidence suggests awareness of the Convention among disabled people is low. It is important that disabled people are aware of their rights in order that they can access them. We recommend that the Government work in partnership with disabled people's organisations in order to increase awareness.**

The Government will centre the new Disability Strategy on the lives and experiences of disabled people, in order to make a reality of the Convention. The Government will explore the need for awareness raising of the Convention within the work undertaken with disabled people on development and implementation of the Strategy.

An important part of the Strategy will be about ensuring that disabled people can access information, advice and advocacy services to help them secure their rights. The Government recognises that Disabled People's User Lead Organisations (DPULO's) have a key role in helping provide that support. In order to help build DPULO's capacity and sustainability, the Government is funding a £3 million programme to help organisations grow and to strengthen the role disabled people play in local communities giving them a greater role in shaping the local decisions that will affect their everyday lives.

### **The impact of current reforms**

#### ***Local authority expenditure***

**29. We recognise the exceptional economic circumstances facing the UK and the challenges involved in implementing the stringent cuts in public spending the Government feel are necessary. However, in tackling these economic challenges the Government must give due attention to their obligations under international law.**

As the Committee recognises, the current economic situation faced by the UK is both challenging and complex. Nonetheless, the Government remains committed to implementation of the Convention and to the removal of barriers that disabled people face. This cannot simply be a question of spending more money. The approach must also be one that looks beyond purely financial measures to address the root causes of entrenched disadvantage, such as poor educational achievement and worklessness. The approach must also look at how the available resources are spent to maximise their effectiveness. This includes recognising that the extra costs that disabled people may face are often very specific and individual. By working to personalise services

where appropriate, for example, by rolling out personalised budgets to give disabled people and their carers more control and purchasing power, the Government is ensuring that resources can have more impact on the lives of individual disabled people.

**30. We welcome the additional £2 billion for social care set out in the 2010 Spending Review but are concerned that, without ring-fencing, it will not make up for anticipated shortfalls in social care budgets. Any reduction in care budgets, particularly in the context of rising care costs, presents a serious risk of retrogression in the realisation of the right to independent living.**

In the Spending Review, the Government recognised the pressures on the adult social care system within a challenging settlement for local government, and took the decision to prioritise adult social care by allocating an additional £7.2 billion to the system over the four years to 2014/15 to support local authorities in delivering social care. The Government's Spending Review assessment was broadly corroborated by a report from the King's Fund – *Social care funding and the NHS* – which showed that, in its worst-case scenario, councils would need to find efficiency savings of 3.5% p.a. to meet the demand pressures on the system.

The Government believes that the extra investment it has set out, combined with a rigorous focus on efficiency, means that there is funding available to protect people's access to care in the Spending Review

How local authorities use the available resources is for them to determine in the light of their assessment of local priorities. This Government is committed to scaling back ring-fencing as part of its agenda of decentralisation. The removal of ring fencing has enabled councils to manage their budgets in line with the priorities of their residents to protect key frontline services, protect the local taxpayer, reduce burdens and drive efficiencies.

The Government notes that a recent report by Demos and Scope, *Coping with the Cuts*, suggests that there is no direct correlation between the budget reductions faced by adult social care services and the impact upon local people. The report also shows that the councils that have 'coped' best with budget reductions are in a mixture of affluent and deprived areas, urban and rural. This demonstrates that if local authorities make appropriate efficiency savings and develop innovative solutions, authorities can maintain and improve people's outcomes and access to the services that people need, including outcomes related to independent living.

**31. We concur with Scope's view that expenditure on independent living should be seen as an investment and that such an approach will reduce long-term costs and promote better outcomes for disabled people and for society in general. We urge the Government to adopt this approach to the funding of adult social care and other budgets which contribute towards independent living.**

The Government has recognised the importance of enabling individuals to lead independent lives with personalisation being one of its seven principles of social care, as set out in its Vision for Adult Social Care. This includes expanding the use of personal budgets so that individuals choose the most appropriate care for them.

As well as giving individuals more control over their care, the Government has moved away from institutionalised care towards support in the community for an independent life. To support this, and the whole of adult social care, the Government has allocated an additional £7.2bn to local authorities over this spending review period. It must be for local authorities to decide how to spend their budget in the light of their assessment of local priorities.

**32. We are concerned that the restriction of Fair Access to Care Services eligibility criteria to critical-only risks giving rise to individual breaches of Article 19(a) of the Disabilities Convention and to retrogression in the realisation of the rights in Article 19(b). We recommend that the Disability Strategy includes measures to monitor the impact of restrictions on eligibility for adult social care on disabled people's right to independent living.**

The Government is committed to protecting the vulnerable in society and Article 19(a) is not contravened by Fair Access to Care Services (FACS) criteria, as the aim of FACS is to ensure that all individuals, assessed as eligible for care services, can access the care they need. The Department of Health published *Prioritising need in the context of Putting People First: A whole system government approach to eligibility for social care, guidance on eligibility criteria for Adult Social Care England 2010*, to assist councils with adult social services responsibilities. The guidance, that helps determine eligibility for adult social care, in a way that is fair, transparent and consistent, came into effect on 1 April 2010.

In addition, the Social Care Institute for Excellence published *Facts about FACS 2010: A guide to Fair Access to Care Services* in April 2010. This provided guidance for frontline staff and managers using FACS criteria to make funding decisions, as well as guidance on the assessment process.

Adult social care is a locally delivered system and local authorities choose how to manage their own resources when supporting the needs of disabled people within their communities. However, the Government is convinced that the extra investment set out, combined with a rigorous focus on efficiency, means that there is funding available to protect people's access to care in the Spending Review.

If local authorities do decide to make changes to eligibility criteria, these should be consulted on with the wider population so that they are aware of such changes. Local authorities should provide clear written explanations when making changes to an individual's care package. Local authorities can use a variety of methods to address an individual's care needs, but when

using their eligibility criteria framework they should work with individuals to identify the outcomes they wish to achieve and to identify any unmet needs.

### ***Disability Living Allowance***

**33. We welcome the Government's recent decision that disabled people in residential settings should continue to be eligible for DLA/PIP mobility component. However, we recommend that, in order for PIP to play its part in promoting independent living, the new assessment system and eligibility criteria:**

- a) must not create a disincentive to using aids and adaptations;**
- b) continue to be based on the fundamental principle that it is a benefit based on the additional costs of impairment, and not based on medical diagnosis; and**
- c) should be independently reviewed with the involvement of disabled people's organisations before being rolled out nationally.**

The Government is committed to supporting disabled people to exercise choice and control and lead active independent lives. By introducing Personal Independence Payment (PIP), the Government wants to create a fairer, more transparent and sustainable system. Overall, spending on PIP and DLA will be higher in real terms in 2015/16 than spending on DLA was in 2009/10 (£13.2 billion compared to £12.4 billion). Meanwhile, support will be better focused on those with greatest challenge to living independent lives and a higher proportion of the caseload are likely to receive the highest rates of the benefit than under DLA.

Like DLA, PIP is designed to make a contribution towards the extra costs that disabled people face. However, the Government does not think it would be feasible to measure the actual costs that individual disabled people incur. Such an approach would result in a subjective, inconsistent, complicated and lengthy assessment. Instead the Government intends to consider a proxy for these extra costs. DLA uses individuals' care and mobility needs as this proxy while PIP will consider an individual's ability to participate in society. Entitlement will not be based on the medical diagnosis of the claimant.

The draft assessment criteria look at an individual's ability to carry out a range of key everyday activities – for example, relating to his/her ability to access food and drink, manage personal care and therapy, communicate and get around. The proposed assessment criteria, weightings and entitlement thresholds are intended to reflect and differentiate between the barriers and extra costs faced by disabled people, considering issues such as the support they need from other people or whether they need to use aids and appliances. They take into account that impairments can affect people in different ways depending on severity and personal circumstances. As such the level of priority an individual will receive will vary according to their particular needs.

PIP has been designed to target support on disabled people who are least able to participate and live independently. As such, if individuals are participating well with the use of aids or appliances, the Government believes that this should be taken into account. The proposal is to take into account aids that are actually used by individuals and which could reasonably be expected to be used, in the same way as in DLA currently. There is no assumption that using an aid removes an individual's need and the Government recognises the need to ensure that the assessment does not create any incentives for disabled people not to take up aids. Points will usually be awarded in the assessment where aids or appliances are required, recognising the need, and it will be entirely possible for people using aids to qualify for the benefit, depending on their circumstances.

The Government has developed the assessment criteria in collaboration with a group of independent specialists in disability, health and social care, including representatives of disabled people. In addition, significant consultation, co-production and testing have already been carried out and have played a considerable role in shaping the draft criteria. This work is ongoing, with a 15 week formal consultation on the second draft assessment criteria having closed on April 30. The Government will carefully consider all of the responses received and the further changes that may need to be made to the assessment criteria. Further testing will be carried out if needed. We will publish our response to the consultation and final draft regulations later this year. The final regulations will also be subject to Parliamentary scrutiny through the affirmative procedure.

Given the significant involvement of disabled people and their organisations in the development process and the testing work that has been carried out, the Government is confident that the assessment criteria will work effectively before they are introduced in 2013. As such it does not feel that an independent review is necessary at this stage. However, the Government will ensure that throughout the initial and ongoing implementation of PIP there is continuous and thorough monitoring of all aspects of the claims process, including the assessment. Changes will be made where necessary. The operation of the PIP assessment will also be subject to two independent reviews, reporting to Parliament within two and four years of implementation.

**34. Significantly fewer people will receive PIP in comparison with those currently receiving DLA. DLA was conceived as a means to enable disabled people to meet the extra costs associated with overcoming barriers to independent living. We fear the introduction of PIP will restrict the ability of disabled people to overcome these barriers and enjoy the right to independent living.**

The Government's position on Personal Independence Payment is set out above (recommendation 33 above refers).

### ***Independent Living Fund***

**35. We are extremely concerned that the closure of the Independent Living Fund to new applicants, with no ring-fenced alternative source of funding, may severely limit the ability of disabled people to participate in society. We would expect the Government to address this issue in their consultation paper on replacement funding to be published in early 2012 and to ensure that this change in policy does not result in individual breaches of the rights in Article 19(a) and retrogression as far as Article 19(b) is concerned.**

Today's social care system is almost unrecognisable from the system in place when the Independent Living Fund (ILF) was first established in 1988. The ILF played an important role in that transformation. The ILF is, and has been since it was established, a discretionary funding stream and payments from the fund do not take precedence over the responsibility of local authorities to assess and fund care and support needs.

The Government closed the ILF to new users because, as was concluded by an independent review of the fund in 2007 but not acted upon by the previous administration, it was no longer sustainable to administer this funding through a separate Non-Departmental Public Body (NDPB) in parallel to the mainstream care system.

Local Authorities are funded to meet those needs as explained under response 30.

### ***Housing benefit***

**36. We welcome the Government's statements that they do not wish to see people forced to move from houses which have undergone adaptation, but the interaction between where a person lives and other elements of the right to independent living go further than the issue of adaptations alone.**

The Government recognises the important role that adaptations play in enabling people to lead active and independent lives and has protected funding for Disabled Facilities Grant (DFG) within the 2010 Spending Review. By the end of the Spending Review period, the national allocation to local authorities for DFG will have increased from £169 million in 2010/11 to £185 million in 2014/15. An additional £20 million was made available in January 2012 for DFG in 2011-12 bringing the total investment in DFG over the Spending Review period to £745 million. Funding is also available for schemes such as home repairs and adaptations, and local advocacy services to enable disabled people to make informed choices about their housing and care. For example £51m has been allocated to the Handypersons scheme and £1.5m invested in the FirstStop information and advice service.

The Government's commitment to promoting choice and providing housing opportunities for people with long-term disabilities, enabling them to live independent lives, goes wider. The Home Ownership for people with Long-

term Disabilities (HOLD) scheme is designed to help people with long term disabilities who need to live in a specific location and are unable to access the Government's mainstream new build low cost home ownership programme. The scheme enables them to buy a property on the open market on shared ownership terms with a registered housing provider. The Department for Communities and Local Government (DCLG) through its Affordable Housing programme will continue to provide funding to housing providers to assist with the purchase of the home so it can be offered on shared ownership terms.

The Government's commitment also extends to enabling people to make an informed choice about their housing and care. The Government is investing £1.5 million in the FirstStop information and advice service. FirstStop provides joined-up advice across a range of housing, care finance and rights. This includes investment in the development of local Firststop partnerships to offer more intensive local support and advocacy services for people requiring higher support need.

The National Planning Policy Framework, which was published on 27 March, asks local planning authorities to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in their housing market area. Local planning authorities should also deliver a wide choice of homes and plan for a mix of housing based on demographic trends and the needs of different groups in the communities, such as older people and people with disabilities. Housing applications should be considered in the context of the presumption in favour of sustainable development. It is for local authorities to determine, engaging with their communities and key partners, the type of housing that is needed in their area. The Framework is available on the Department for Communities and Local Government's website at:

<http://www.communities.gov.uk/publications/planningandbuilding/nppf>

The design of neighbourhoods is also vital in enabling independence. In January, DCLG published the independent *Lifetime Neighbourhoods* report to share good practice and enable local partners to create inclusive neighbourhoods where everyone can participate fully in his/her local community, regardless of age or disability.

**37. We welcome the increase in the Discretionary Housing Fund, but are concerned that its discretionary nature means it will not provide an adequate guarantee that the right of disabled people to exercise choice and control over where they live will be consistently upheld in the light of reductions in Housing Benefit.**

The support for Discretionary Housing Payments has already trebled and the Government has added a further £30 million on top of that to assist some of those affected by the introduction of social sector size criteria into the calculation of Housing Benefit from April 2013. This additional funding from 2013/14 is aimed specifically at two groups. The first is disabled people who live in significantly adapted accommodation; the extra funding is to enable them to remain in their existing homes. The second group is foster carers,

including those who need to keep an extra room when they are in between fostering.

The Government believes that Discretionary Housing Payments are a more effective approach than providing blanket exemptions for every situation where the claimant faces a shortfall between their rent and the amount of Housing Benefit payable. Local decision makers are far better placed to make informed judgements about relative priorities and needs and to target limited resources more effectively.

The Government is making it easier for all social tenants to move, through changes to the allocation rules contained in the Localism Act and the introduction of a national home swap scheme, HomeSwap Direct. In addition, DCLG has allocated £13m over the next four years to help local councils support under-occupying social tenants who wish to downsize, as well as funding an action team within the Chartered Institute of Housing to work with all social landlords to help them promote moves.

The Government will keep the wider position under review as the overall package of Housing Benefit reforms takes effect.

**38. The range of reforms proposed to housing benefit, Disability Living Allowance, the Independent Living Fund, and changes to eligibility criteria risk interacting in a particularly harmful way for disabled people. Some disabled people risk losing DLA and local authority support, while not getting support from the Independent Living Fund, all of which may force them to return to residential care. As a result, there seems to be a significant risk of retrogression of independent living and a breach of the UK's Article 19 obligations.**

As the response to recommendation 21 above notes, the Government's programme of welfare reform will be fully implemented in 2017/18 and many policy details are still being finalised. The effect of these changes, and those in the tax system and in Government spending since 2010 is complex. The Government is committed to enabling disabled people to make their own choices and to live independently. The new Disability Strategy will restate this commitment.

**39. We recommend that the Office for Disability Issues, working with the devolved administrations and local authorities, monitor the impact of reform and spending decisions on the right to independent living and undertake to promote innovative ways through which to mitigate their impact. This should include reporting on to what extent reforms to the ILF, DLA and housing benefit are enabling the Government and local authorities to deliver their Article 19 obligations.**

The Government – through the work of the Office for Disability Issues - will monitor disabled people's experiences of independent living as part of the monitoring set in place for the Disability Strategy. For example, at local level, the ODI will develop processes to capture the lived experiences of disabled

people and ensure that mechanisms are in place to address issues that are identified through the monitoring process.

At national level the ODI will continue to monitor a range of indicators including, for example, the following which look specifically at independent living:

- People with long-term conditions supported to be independent and in control of their condition.
- Disabled people's perception of the choice and control they have over their lives.
- Take up of direct payments.
- People supported to live independently through social services.
- Suitability of accommodation for disabled people requiring adaptations to their home.
- Households living in non-decent accommodation.

### **Adult social care**

#### ***Personalisation of adult social care***

**40. National and local government should monitor and actively promote the innovative practices of local authorities which employ personalisation effectively to mitigate the impact of spending cuts. The Government should monitor the extent to which choice and control is being diminished or increased by the roll out of personal budgets, and take action if the goal of increasing choice and control is not being realised.**

Local authorities are primarily accountable to their own population for the performance of services and the outcomes achieved for local people. However, the Government is clear that there should not be limitations on the uses of personal budgets as long as they accord with a care plan. The Department of Health is currently considering how local authorities should work with individuals to ensure their outcomes are met through true choice and control, both of which are crucial mechanisms to the personalisation agenda. The policy position will be set out in the soon to be published White Paper.

The Department of Health and the social care sector has published guidance to local authorities to ensure personal budget holders received the support they required to take control and obtain services. Among these publications are the 2009 *“Guidance on direct payments: For community care, services for carers and children’s services”*; *“Think Local, Act Personal”* and in October 2011 *“Re-thinking support planning: Ideas for an alternative approach”*.

It is important to note that local authorities should not view or implement the personalisation agenda as a means to achieve cost savings.

Recent reports from the Audit Commission have suggested that personalisation is more likely to lead to better value for money from improved outcomes, rather than cost savings. The Government's extra investment over the next years combined with a rigorous focus on efficiency will ensure people's access to care is well protected.

In the context of adult social care, local authorities are not performance managed on a national basis. However, the Department of Health is responsible for setting the information requirements made on local authorities (including the Adult Social Care Outcomes Framework), which supports monitoring and analysis by the social care sector, the Department, local communities, and other interested parties.

**41. We welcome the Government's pilot scheme to extend personal budgets to primary healthcare. They should also monitor this scheme with regard to the increase or reduction of choice and control, and take action if there is no increase.**

Increasing choice and control are at the heart of personal health budgets. An independent evaluation of the current pilot programme is due to be published in October 2012; to date four interim reports have been published, with a fifth due shortly. Subject to the evaluation, the Government's aim is to extend personal health budgets nationally on a voluntary basis. The longer-term aim is to introduce over time a right to a personal health budget for people who would benefit from one, informed by the evidence from the evaluation. In October 2011, the Government announced that, subject to the evaluation, by April 2014 everyone in receipt of NHS Continuing Healthcare will have a right to ask for a personal health budget, including a direct payment. Clinical commissioning groups, overseen by the NHS Commissioning Board, will have responsibility for delivering personal health budgets, including ensuring people have real choice and control over how their health needs are met.

The independent evaluation is reviewing a number of areas, including the services people choose and the effect on NHS services. The budget holders' experiences and their carers' will be part of the evaluation. The fourth interim report, published in October 2011, showed that early experiences have been broadly positive so far. Many people have started seeing the benefits of personal health budgets through an improved experience, greater satisfaction with services and an increased ability to live independently. They can also see the health benefits personal health budgets could bring.

#### ***Portability of care***

**42. We welcome the Government's intention to consider introducing portable assessments. However, we are concerned that this may be insufficient to ensure the enjoyment of rights under Article 19, in particular the right to choose one's place of residence and where and with whom one lives on an equal basis with others. We urge the Government to consider whether further action is required.**

Measures to address portability of care were recommended both by the Law Commission and the Commission on Funding Care and Support. The Government is considering the recommendations in advance of a White Paper on care and support and progress report on funding reform, which will be published soon. The White Paper will cover a number of areas, which will contribute to individual choice and so contribute to ensuring people benefit from the rights under Article 19.

### ***Residential care***

**43. The Government should include in its Disability Strategy Action Plan a commitment to enable disabled people living in residential settings to access their full Article 19 rights. It should also set out actions to achieve this commitment, and establish detailed outcomes against which progress can be measured and monitored. The Government should also ensure that residential care home providers are aware of the UNCRPD and of their role in assisting in its implementation.**

The Care Quality Commission (CQC) regulates all care homes in accordance with statutory regulations and national standards. CQC was established by the Health and Social Care Act 2008 and took over the regulation of social care, including care homes, from the Commission for Social Care Inspection. As well as establishing CQC, the 2008 Act strengthens regulatory powers to ensure CQC can enforce regulatory requirements that are in line with the relevant provisions of the European Convention on Human Rights. The Office for Disability Issues (ODI) will explore with the CQC how awareness of the Convention on the Rights of Disabled People can be developed amongst residential care home providers,

**44. There appears to be an anomaly in the charging policy for residential care which creates a significant work disincentive, thus impeding access to independent living. The Government also appear not to recognise the extent to which people living in residential care are able to engage in paid work. We urge the Government to take action to remove this disincentive as soon as possible.**

The Government recognises the potential for those receiving social care to undertake paid employment and is keen to ensure that there are good incentives for so doing. The Department of Health is currently looking at the charging regulations for social care, and will work across Government, especially with the Office for Disability Issues, on the treatment of earned income in residential care.

### ***The role of inspection and regulation***

**45. The Government should, in partnership with disabled people's organisations, monitor the extent to which regulation and inspection frameworks are promoting independent living in both domiciliary and**

**institutional settings. The Disability Strategy should include the role of regulation and inspection in promoting Convention rights.**

All providers of regulated activities must be registered with the Care Quality Commission (CQC), and continue to meet 16 essential safety and quality registration requirements.

The 16 registration requirements reflect the essential levels of safety and quality of care that people should be able to expect, and are built around the main risks inherent in the provision of health and adult social care services.

They include a requirement to respect and involve people who use services which includes promotion of autonomy, independence and community involvement.

Under the Health and Social Care Act 2008, CQC is responsible for developing and consulting on its methodology for assessing whether providers are meeting the registration requirements and published its *Guidance About Compliance* in March 2010. The Government expects CQC to work with people who use services and their representatives in drawing up its methodology, and the 2008 Act requires CQC to have regard to the experiences of people who use health and social care services, their families and friends.

CQC is an executive non-departmental public body accountable to the Secretary of State for discharging its functions, duties and powers efficiently and effectively. The Department monitors CQC's financial and operational performance and risks at a general and strategic level through regular formal accountability meetings.

### ***Commissioning***

**46. The NHS Commissioning Board should produce guidance for Health and Wellbeing Boards on the need to incorporate human rights into their commissioning strategies, emulating the guidance of the Scottish Government.**

The NHS Commissioning Board's legal powers will be restricted to issuing guidance to the operation of clinical commissioning groups (CCGs) not to health and wellbeing boards which will be a committee of the local authority - neither local authorities nor health and wellbeing boards would be under a duty to adhere to any guidance published by the NHS Commissioning Board.

Health and wellbeing boards are not required to produce commissioning strategies themselves, although some of the statutory members (clinical commissioning groups, directors of public health, directors of children's services and directors of adult social services) are, within their operation of those roles. These commissioning plans should be based on the work of the health and wellbeing board in undertaking Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs).

The Department of Health is developing statutory guidance for health and wellbeing boards on undertaking JSNAs and JHWSs which will make it clear that health and wellbeing boards must comply with the Public Sector Equality Duty in undertaking them, and should also consider issues such as inequalities and independence. As local strategic processes, central Government will not be specifying the form or content of JSNAs and JHWSs, however the Department is working emerging health and wellbeing boards to explore what good practice looks like and how to support it, including considering equality issues and inequalities for people in vulnerable circumstances, such as those with disabilities

**47. The Health and Social Care Act 2008 included a provision which ensured private and third sector care homes were defined as carrying out a public function when providing publicly-arranged care, bringing them within the scope of the Human Rights Act 1998. The current Health and Social Care Bill should be similarly amended to extend this definition to provision of care at home.**

All providers of publicly arranged health and social care services, including private and voluntary sector providers, should consider themselves to be bound by the duty imposed by section 6 of the Human Rights Act 1998 and not to act in a way that is incompatible with a Convention right.

Any amendment to the Human Rights Act in relation to third sector and private providers of home care, such as provision in the Health and Social Care Bill, that explicitly specifies that they are subject to the section 6 duty, risks casting doubt about the interpretation of the Human Rights Act in other sectors. Specific provisions tend to weaken the applicability of the general test and raise doubt about bodies that have not been specified explicitly in the legislation.

#### **Access to information and advocacy**

**48. Access to information, advice and advocacy is critical for all disabled people to benefit from personalisation. The Government should:**

- **monitor access to information, advice, and advocacy services in the context of the roll-out of personal budgets;**
- **continue to support and develop the role of Disabled People's User-Led Organisations to enable them to provide independent information, advice, and advocacy services;**
- **implement the advocacy provisions in sections 1 and 2 of the Disabled Persons Act 1986 when reforming community care legislation.**

The Government agrees that more can be done to strengthen the existing guidance on information and support. The Law Commission, the Report of the Commission on Funding of Care and Support (Dilnot Review) and the *Caring for Our Future* engagement exercise identified that access to good quality information at both national and local levels are crucial mechanisms to support the personalisation agenda. The White Paper will set out the Government's proposals to improve the information and advice available to support people to make more informed choices about their care and support. Alongside the White Paper, the Government will publish its formal response to the Law Commission's recommendations including the right to advocacy contained in the Disabled Persons (Services, Consultation and Representation) Act 1986.

The Government recognises the important role that Disabled People's User Lead Organisations play. The Office for Disability Issues is funding a £3 million programme to help them grow and strengthen the role disabled people play in local communities. This aims to give them a greater role in shaping the local decisions that affect their everyday lives.

#### **Access to housing and to community facilities on an equal basis with others**

#### **49. The Disability Strategy should set out how the Government intend to take action on, and measure progress on, disabled people's access to housing, transport, public space and public services within the context of the right to independent living.**

The Government recognises the importance of removing barriers to disabled people's access to housing, transport, public space and public services that may stand in the way of them being able to live independent lives. The Disability Strategy will set out what action is being taken in these areas and how progress will be monitored. For example, the Department for Transport (DfT) like other departments will be contributing to the Strategy. To complement the Strategy, DfT is also developing a disability action plan that will spell out the actions and measures it is taking to improve access to transport for disabled people, including those aimed at reducing harassment on the transport network.

As part of the work on developing the Strategy, the Government is looking at how it can be supported by a monitoring process to measure the impact, and who should be involved in that in addition to Government. In doing so, the Government is mindful of the role that disabled people and their organisations can play, and in the discussions around *Fulfilling Potential* have asked disabled people how they want to be involved.

The Government is also mindful of the need to avoid a cumbersome process. The Government is, for example, committed to reducing the burden that collation of data placed on local authorities and announced the end of over 50 separate data collections in 2010. This will allow councils to redirect resources to the frontline and meet local priorities free from top-down,

centralised performance management structures. The Secretary of State for the Department of Communities and Local Government has made a public commitment that councils will not be required to provide any new unfunded data collections over and above those catalogued in the single data list.

### **Hate crime and abuse**

**50. The occurrence of hate crime against disabled people, and the fear of such crime, is a growing threat to disabled people's ability to live independently. We welcome the Government's commitment to reducing hate crime, and in particular the requirement that police forces collect and report data on such offences.**

The Government is committed to ensuring that everyone has the freedom to live their lives free from fear of targeted hostility or harassment on the grounds of a particular characteristic, including disability.

Despite strong legislation to protect victims, hate crimes remain hugely under-reported. Victims may be reluctant to come forward, for various reasons such as fear of further abuse. The Government recognises that it has a key role to play in setting the direction at national level, including making more and better national-level data available so that there is better understanding of these offences and support to victims can be improved.

The Government is meeting its commitment to improve the recording of such crimes and, from April 2011, all police forces now report hate crimes centrally. Published data from the Association of Chief Police Officers show that there were increases in the number of hate crimes reported relating to disability in 2010 (a 21.3% increase on the recorded figures for 2009). This is a positive step – and reflects the efforts of the police and others to encourage victims to report hate crime and to better record it.

The Government is also working with the police and other partners to encourage more victims to come forward for example, by developing third party reporting centres, where hate crimes can be reported to those organisations and then forwarded to the police.

The Government believes that hate crimes in all its forms is intolerable, and that disability hate crime should be viewed just as seriously as that based on race, religion, sexual orientation or transgender. In March 2012 the Government published its cross-Government Hate Crime action plan setting out its approach to tackling hate crime for the remainder of this Parliament. The plan includes specific actions to protect and support disabled people. The review of sentencing provision provides the opportunity to consider changing the law. Perpetrators of hate crime should be subject to the same level of

**51. We remind the Government of its obligations under Article 8 of the Disabilities Convention to foster respect for the rights and dignity of persons with disabilities and to combat stereotypes and prejudices relating to such people. The Government should take care to ensure that**

**the justifications it offers for its reforms to the system of disability benefits does not undermine its other work to promote positive perceptions and greater social awareness towards persons with disabilities.**

The Government is committed to combating stereotypes and prejudice relating to disabled people, and to raising awareness of their abilities. One of the key areas the Disability Strategy will address is changing attitudes and behaviour - promoting positive attitudes and behaviours towards disabled people to enable them to participate in community life and wider society, tackling discrimination and harassment wherever they occur.

The Government is very careful about the language it uses when referring to welfare reform as it is clear that it is the system itself that has for too long trapped people in a life of welfare dependency. That is why this Government is making such a radical overhaul of the benefits system to restore its integrity and ensure that those who need help and support receive it.

### **Access to redress and justice**

**52. The Government should monitor the extent to which access to redress and justice for disabled people is affected by the provisions of the Legal Aid, Sentencing and Punishment of Offenders Bill, and the effect this has on their right to independent living. The Disability Strategy should include action to be taken to ensure disabled people's access to redress and justice.**

The Government is committed to ensuring that legal aid is available to those who need it most, and for those cases that require it. Government is confident that it has met its obligations under the Equality Act 2010 in developing its proposals for reform. The Government is also committed to assessing the impact of the Legal Aid, Sentencing and Punishment of Offenders Bill once enacted and implemented, and is currently developing a range of approaches to improve its evidence base on legal aid clients, including those with a disability.

In the first UK report to the UN Committee on the Rights of Persons with Disabilities, the Government stated clearly its commitment to equality of access to justice for disabled people and actions taken to enable this. In development of the Disability Strategy, the Government is considering what additional actions may be taken in this area.