



**BRIEFING PAPER**

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# The UN Inquiry into the Rights of Persons with Disabilities in the UK

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## Summary

At the end of August 2015, it was revealed in the national press that the UN Committee on the Rights of Persons with Disabilities was to conduct an inquiry into the impact of the UK Government's policies on the rights of disabled people.

The inquiry was conducted under the Optional Protocol to the Convention on the Rights of Persons with Disabilities, to which the UK has been a signatory since 2007. The Optional Protocol allows the UN Committee to investigate a State Party if they have received reliable evidence of 'grave and systematic violations of the Convention'. The UK is the first country to be investigated by the UN in relation to this Convention.

As part of the inquiry, committee members visited a number of UK cities to investigate potential violations of the Convention, and looked into welfare reforms enacted after 2010. The [report](#), published on 6 October 2016, found that the reforms have led to 'grave and systematic' violations of the rights of disabled people, emphasising changes to Housing Benefit entitlement, eligibility criteria for Personal Independence Payment (PIP) and social care, and the ending of the Independent Living Fund. Specifically, the Committee looked into any violations of the rights of disabled people under the Convention, to:

- live independently and to be included in the community (article 19);
- an adequate standard of living and social protection (article 28); and
- work and employment (article 27).

The Government published a robust [response](#) alongside the publication of the Committee's report, stating that it "strongly disagrees" with the findings. During questions on the Business Statement on [12 January 2017](#) (c480), David Lidington referred to the report in the following terms:

The Government have already made it clear that we regard the report from that particular UN committee as a grotesque misrepresentation of the state of affairs in the United Kingdom. For one thing, it took no account of our very successful record in getting a record number of disabled people into work, or of the support programmes for disabled people who are in work.

This paper gives some background to the UN Committee on the Rights of Persons with Disabilities and the Convention, as well as providing an overview of the inquiry process, the [Committee's report](#), and the UK Government [response](#) to its findings.

# 1. UN Committee on the Rights of Persons with Disabilities

The [United Nations Committee on the Rights of Persons with Disabilities](#) (UN CRPD) is one of the ten human rights treaty bodies operating under the support of the [Office of the High Commissioner for Human Rights](#).<sup>1</sup>

The Committee acts as a body of independent experts who monitor the implementation of the Convention on the Rights of Persons with Disabilities (hereafter 'the Convention') by States Parties.

The Committee was established under Article 34 of the Convention and consists of [18 members](#) elected from a list of persons nominated by the States Parties at conference. Members serve a four year term.

## 1.1 The Convention

The [Convention on the Rights of Persons with Disabilities](#) is an international human rights treaty which was adopted by the UN General Assembly on 13 December 2006.<sup>2</sup>

There are 160 States Parties to the Convention (countries who have ratified the Convention or in which it is in force), and 27 signatories who have endorsed the treaty but have yet to ratify it.<sup>3</sup>

The United Kingdom signed the Convention on 30 March 2007; it was ratified on 8 June 2009.

The Convention exists to promote and protect the rights of persons with disabilities. It reaffirms universal human rights and fundamental freedoms, and emphasises the need for persons with disabilities to be guaranteed full enjoyment of those rights without prejudice or discrimination.

The Convention does not define 'disability', but says that it includes 'long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder [a person's] full and effective participation in society on an equal basis with others.'<sup>4</sup>

The Convention clarifies and qualifies several of the rights found within the Universal Declaration of Human Rights, including:

- The right to an adequate standard of living and social protection.
- The right to education.
- Equal recognition before the law.
- Access to justice.
- Access to healthcare.
- The right to work.
- Rights concerning accessibility.

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<sup>1</sup> OHCHR, [Human Rights Bodies](#), [website accessed 19 November 2015].

<sup>2</sup> General Assembly resolution A/RES/61/106.

<sup>3</sup> UN Treaty Collection, [Convention on the Rights of Persons with Disabilities](#), status as at 23 November 2015.

<sup>4</sup> Convention on the Rights of Persons with Disabilities, Art. 1.

## 1.2 The Optional Protocol

The [Optional Protocol](#) provides two additional powers to the Committee:

- 1 The option to receive and examine individual's complaints regarding their State's implementation of the Convention.
- 2 The ability to undertake inquiries into 'grave and systematic violations of the Convention' by States Parties if presented with reliable evidence.

States Parties who have signed the Optional Protocol have agreed to recognise the competence of the Committee in these matters.

The Optional Protocol has been signed by 118 countries and ratified in 88. The UK ratified the Optional Protocol on 7 August 2009.<sup>5</sup>

### Article 35: Reports by States Parties

Under article 35 of the Convention, States Parties are required to submit reports to the Committee on the implementation of the Convention in their country. The reports should be comprehensive in coverage listing any measures enacted to effect the obligations listed under the Convention and detail any progress made.

States Parties are required to submit an initial report two years after the Convention comes into force in their country, and then every four years thereafter. The United Kingdom's initial report, due in 2011, was submitted on 24 November 2011 and published by the UN in 2013.

- Reports by the States Parties may be found through the [UN Treaty Bodies search for the CRPD](#).
- The [UK initial report on the UN Convention on the Rights of Persons with Disabilities](#), published in 2011 by the Office for Disability Issues, is also available from the GOV.UK website.
- As part of the UK Independent Mechanism on the Convention, the Equality and Human Rights Commission published an [interim monitoring report](#) in 2014 available on their website.

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<sup>5</sup> UN Treaty Collection, [Optional Protocol to the Convention on the Rights of Persons with Disabilities](#), status as at 23 November 2015.

## 2. Inquiry into the UK

The investigation by the UN Committee on the Rights of Persons with Disabilities into the UK Government was revealed in the press towards the end of August 2015.<sup>6</sup>

The inquiry was instigated by the charity Disabled People Against Cuts (DPAC), which contacted the UN Committee in 2012; although other charities subsequently confirmed that they had also been in contact with the UN.<sup>7</sup>

The existence of an investigation by the UN CRPD into the UK Government was confirmed in Parliament on 14 September 2015 when, in a reply to a written question on the matter, the Parliamentary Under-Secretary of State for Disabled People at the Department of Work and Pensions, Justin Tomlinson, wrote:

The Rules of Procedure of the UN Committee on the Rights of Persons with Disabilities provide that all documents and proceedings of the Committee relating to the conduct of an inquiry under the Optional Protocol are confidential. However, as the existence of an inquiry has already been made public by others, I can confirm that the Government has received representations from the Committee in connection with that. The nature, scope and timetable for the inquiry remain confidential.<sup>8</sup>

The inquiry was conducted under Article 6 of the Optional Protocol which allows a State Party to be investigated should the Committee receive, 'reliable information indicating grave or systematic violations,' of the rights affirmed by the Convention. The proceedings and scope of any inquiry conducted under Article 6 are confidential.

This was the first time a State Party has been investigated by the Committee under the Optional Protocol.

The Committee requested a visit to the UK as part of its investigation, which was granted by the UK, and two committee members visited London, Manchester, Glasgow, Edinburgh, Belfast and Cardiff, between 12<sup>th</sup> and 23<sup>rd</sup> October 2015. In addition to the visit, in which the Committee representatives interviewed over 200 people, the Committee collected more than 3,000 pages of documentary evidence, including both public and confidential documents.

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<sup>6</sup> *Mirror*, 'United Nations to probe Iain Duncan Smith's welfare reforms for 'grave violations' of human rights', 30 August 2015; *The Independent*, 'UN investigating British Government over human rights abuses caused by IDS welfare reforms', 30 August 2015.

<sup>7</sup> *Disability News Service*, '[Confirmed! UN is investigating UK's grave violations of disabled people's rights](#)', 11 September 2015.

<sup>8</sup> PQ 9424 [on Social Security Benefits: Disability] asked on 8 September 2015.

## 3. Findings

### 3.1 General Findings

The General Findings section sets out the context for the report, outlining the welfare reform programme that was launched by the 2010-15 Government, and flagging the key policy changes that affected disabled people. Further information on these policy changes is given in the following sections of this paper.

The report states that some of the evidence that was submitted was disputed by the UK Government, so the Committee sought to verify the information by cross-checking with a number of sources:

...the facts that appeared to be controversial were cross-checked with data collected from a variety of sources, including parliamentary inquiries, reports of the independent monitoring body of the Convention, official statistics, reports and data originating from other government departments or units, entity governments, research institutes, service providers, academic centres, independent experts, former government officers, grass-roots non-governmental organizations, organizations of persons with disabilities and individuals.<sup>9</sup>

It goes on to argue that disabled people “have been regularly portrayed negatively”. The UK Government reportedly produced evidence of formal campaigns that were undertaken with the aim of tackling this negative portrayal, but the Committee found that disabled people continued to face “increasing hostility, aggressive behaviour and sometimes attacks to their personal integrity”.<sup>10</sup>

The Committee also asserts that the Government’s approach generally did not reflect the international human rights framework. In particular, the report raises concerns regarding:

- The “medical approach” to assessing eligibility for benefits, which it argues does not take into account the specific needs of disabled people;
- Information and advice regarding the assessment process that was “limited, non-existent or not provided in accessible formats and languages”;
- The restriction of access to legal aid to challenge decisions ending or reducing benefits;
- A lack of evidence of “periodic monitoring and evaluation activities” which involved disabled people into the impact of policy changes.
- The temporary nature of mitigating measures to support disabled people in coping with changes to their benefits (in England).<sup>11</sup>

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<sup>9</sup> UN CRPD, *Report of the Committee*, p.14

<sup>10</sup> *Ibid.*, p.15

<sup>11</sup> *Ibid.*, pp.15-16

## Impact assessments

The report is critical of the Government's impact assessments on the policy changes. These assessments are required under the public sector equality duty (PSED). The UK Government supplied evidence that it had complied with the requirements under domestic legislation but the Committee states that it received evidence that the *Welfare Reform Act 2012* did not fully comply with the PSED. The report also asserts that the Government could, and should, have undertaken a *cumulative* impact assessment of *all* of the policy changes that have affected disabled people. The Government claimed that this was not technically feasible.<sup>12</sup>

### Policy Background – impact assessments

Under the PSED, public authorities must consider how changes in policy will affect people who have the following 'protected characteristics':

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

The PSED was introduced by the *Equality Act 2010*, which states that public authorities must have 'due regard' to eliminate unlawful discrimination, advance quality of opportunity, and encourage good relations between those with protected characteristics and those without.

The Government carried out numerous equality impact assessments (EIAs) regarding the individual policy changes introduced by the *Welfare Reform Act 2012*. All relevant assessments can be found online [here](#).

The Equality and Human Rights Commission (EHCR) responded to the *Welfare Reform Bill* (before it received Royal Assent), in which it commented on the Government's EIAs:

As the regulator with responsibility for monitoring and enforcing equality legislation, the Commission is concerned to ensure that the government has met its obligations under the public sector equality duty and will continue to meet its obligations under the public sector equality duty.

The Commission has been advised by legal counsel that three areas may be relevant here and we seek assurances that the government has met requirements in each of these areas:

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<sup>12</sup> Ibid., pp.16-17



I. The collection of data necessary to adequately determine impact on certain groups.

II. Consideration of the equality objectives when assessing equality impact, including: to promote equality of opportunity and good relations between persons of different racial groups; to take steps to take account of disabled persons disabilities even where that involves treating disabled people more favourably than other persons etc.

III. The completion of a cumulative assessment of impact to demonstrate the full impact of proposals on protected groups and how they interact.

The Commission is particularly concerned that the government will not know the full impact of the Bill proposals unless data is collected for all protected groups. For example, the government states it is not able to measure the extent of the adverse impact of the housing and benefit cap on ethnic minority households because the sample size is not large enough.

The Commission notes that in some instances the equality assessment of impact found measures will disproportionately affect groups with protected characteristics. For example, the government has estimated that 30% of the households affected by the benefit cap will contain ethnic minority members, while ethnic minorities comprise less than 10% of the total population. The Commission looks forward to hearing more detail from the government as to how it intends to mitigate this impact.<sup>13</sup>

A number of other groups also called on the Government to carry out a cumulative impact assessment. A petition started by the campaign group, War on Welfare (WOW), which called for a cumulative assessment to be completed, collected more than 100,000 signatures and was debated in the House of Commons on 27 February 2014. The Government response said:

Cumulative impact analysis is not being withheld – it is very difficult to do accurately and external organisations have not produced this either.

The Government is limited in what cumulative analysis is possible 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 number of different policy changes. In addition, the Government's programme of welfare reform will not be fully implemented until 2017/18 and many policy details are still to be worked through. Equality Impact Assessments are however carried out for individual policies where there is a requirement.

No other organisation produces this analysis in a robust way. The Treasury does publish some cumulative analysis with each Budget but this is a broad brush assessment of all tax, benefit and expenditure changes since 2010 across households. Because the Budget cumulative analysis is so complex, it is not robust enough to break down by family type – so impacts on disabled people cannot be shown separately.

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<sup>13</sup> [Memorandum submitted by the Equality and Human Rights Commission \(WR50\)](#), Welfare Reform Bill Public Bill Committee, Session 2010-12

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The IFS also produces some cumulative analysis but also do not feel the results are reliable enough to disaggregate for the disabled.

The Government maintained this position in its response to the Committee's report:

This cumulative distributional analysis (by HM Treasury) is the most comprehensive available, covering not only the effects of direct cash transfers between households and government, but also the effects of frontline public service provision. Welfare spending is not the only way to help disabled people; further support including health spending, employment support, and investment in infrastructure are important enablers to the removal of barriers to participation.

This analysis is not broken down into sub-groups, such as disabled people, due to significant modelling limitations to the robustness of such analysis, e.g.:

- many benefits are paid to households rather than individuals. Modelling would have to make strong assumptions about how income is shared within households and the analysis results would be heavily dependent on these specific assumptions;
- it is essential that the Living Cost and Food Survey (LCF) is used for the distributional analysis model. This survey does not hold sufficient disability information.<sup>14</sup>

Some organisations have disputed the Government's claim that it would not be feasible to carry out a cumulative impact assessment, including the [Social Security Advisory Committee](#), which made the following recommendations:

- The Government should produce further analysis of the cumulative impact of welfare reform on vulnerable groups such as disabled people and publish the findings within six months;
- DWP should provide a range of case study examples of the cumulative impact of welfare reform to sit alongside further quantitative analysis. Such examples, based on model households, would illustrate how the effect of individual reforms might accumulate for particular claimant groups (in terms of their income and their behavioural choices);
- DWP should consider extending its forthcoming evaluation of Universal Credit so as to also evaluate the impact of its programme of welfare reform; and
- DWP should consider whether there have been any cumulative impacts on vulnerable claimant groups that need to be mitigated.<sup>15</sup>

On 31 July 2014, the EHRC published a report by the National Institute of Economic and Social Research (NIESR) and Landman Economics on progress in developing a model of the cumulative impact of Government spending and fiscal decisions on particular groups.

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<sup>14</sup> UK Government Response to the Report by the UN CRPD, p.25

<sup>15</sup> SSAC Occasional Paper 12: The cumulative impact of welfare reform: a commentary, 29 April 2014

The report, [\*Cumulative Impact Assessment: A Research Report by Landman Economics and the National Institute of Economic and Social Research \(NIESR\) for the Equality and Human Rights Commission\*](#), looked at whether it would be possible to produce an analysis of the cumulative impact of tax and spending decisions for any or all of the groups who share characteristics protected under the *Equality Act 2010* – gender, race, disability, age, sexual orientation, pregnancy and maternity, marriage and civil partnership, gender reassignment, religion or belief.

The main conclusions from the NIESR and Landman Economics study was that it *was* possible to develop such a model but further work was required. On the feasibility of a cumulative impact assessment, the research found:

- Modelling cumulative impact assessment by equality group was feasible and practicable (at least for the protected characteristics for which sample size information is available in household survey data).
- However, a number of important caveats applied. Some of the modelling was by its very nature experimental and it was hoped this would be the basis of future discussion with HM Treasury and the Fair Financial Decisions Advisory Group. Issues to be addressed included data constraints (sample size or the nature of the relevant surveys); others, particularly in the case of gender, were methodological choices.
- In order to get a full picture of the impact, it was necessary to look at impacts both by income and by equality group, where possible in conjunction (where sample size allowed).
- Modelling the impact of tax and benefit changes was easier, both conceptually and in practice, than modelling the impact of public spending changes.

## 3.2 Article 19 – Living independently and being included in the community

The Committee found that a number of welfare reforms have had a disproportionate impact on disabled people, and have curtailed the rights of disabled people under article 19. The specific policies in question are outlined in this section.

### Housing Benefit

#### Report Findings

The [report](#) found that the **under-occupancy deduction from Housing Benefit**<sup>16</sup> has had a negative impact on disabled people and their ability to live independently and be included in the community.

The Committee found that social housing size criteria failed to take into account specific living arrangements required by disabled people. While noting that Discretionary Housing Payments have attempted to mitigate

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<sup>16</sup> Also referred to as the Removal of the Spare Room Subsidy or the 'bedroom tax'.

effects, the report states that the concerns that were outlined by the UN Special Rapporteur in 2013 remain relevant.

The [report](#) suggests that these changes, taken together with other changes to the welfare system, have caused financial hardship for disabled people, and have resulted in increased debt and eviction, and have led disabled people to cut spending on essentials such as housing and food.<sup>17</sup>

### Policy background

As of April 2013, tenants living in social rented housing deemed too large for their needs became subject to a weekly deduction from their Housing Benefit.<sup>18</sup>

This measure, known by proponents as ‘the removal of the spare room subsidy’ and the ‘bedroom tax’ by those opposed to the policy, has proved controversial, particularly in relation to the lack of a general exemption for disabled claimants. The following exemptions *do* apply in relation to disability:

- Disabled tenants who require an additional bedroom for a non-resident carer who provides overnight care do not have any reduction in Housing Benefit.
- Since 4 December 2013, an additional bedroom has been allowed for an overnight carer in the calculation of eligibility for Housing Benefit for any joint tenant, or their partner, in the property.
- Also as of 4 December 2013, disabled children who are deemed unable to share a bedroom by reason of their disability are allowed their own room.

A [Supreme Court judgment](#) handed down in November 2016 held that where there is a clear medical need for an extra room it is not enough that Discretionary Housing Payments (DHPs) may be awarded. Cases of a child needing an overnight carer and partners unable to share a room due to disability were identified by the court as demonstrating a clear medical need for an additional room.<sup>19</sup> *The Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2017*, which will come into force on 1 April 2017, will make changes to the size criteria rules in order to comply with the judgment. In the meantime, the DHP Guidance (updated in December 2016) contains the following advice for authorities:

The Department is currently considering legislative changes to comply with the terms of the judgment. In the meantime, the Department recommends that LAs consider awarding DHPs to claimants who are unable to share a bedroom due to disability and require an additional room as a result. Further information can be found at: [HB Bulletin U3/2016](#).<sup>20</sup>

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<sup>17</sup> UNCRPD Report, p.17

<sup>18</sup> The deduction is 14% of the eligible rent in respect of one spare bedroom, and 25% deduction for two or more spare bedrooms. A similar deduction for under-occupation has existed in the private rented sector since 1989.

<sup>19</sup> [MA & Ors, R \(on the application of\) v The Secretary of State for Work and Pensions](#) UKSC 58.

<sup>20</sup> DWP, [Discretionary Housing Payments Guidance](#), December 2016, para 2.22

It was clear that the under-occupancy deduction would impact a higher proportion of disabled claimants from the Department for Work and Pensions' own [Equality Impact Assessment](#): this suggested that two thirds of all Housing Benefit claimants affected by the measure would have a disability recognised under the *Disability Discrimination Act*.<sup>21</sup>

As of November 2016 (latest available data) there were 411,590 claimants in Great Britain affected by the under occupation penalty ("bedroom tax"). Of these, 208,640 were in receipt of income-based Employment Support Allowance – suggesting that, as of November 2016, around half of claimants affected by the under occupation penalty have a disability.<sup>22</sup>

The proportion of claimants affected by the under occupation penalty with a disability has risen from 37% in November 2013 to 51% in November 2016.

In its scrutiny of the *Welfare Reform Bill 2011-12*, the Joint Committee on Human Rights highlighted some potential discriminatory outcomes of the under-occupation deduction in relation to disabled occupants of social housing:

The proportion of disabled claimants affected by the measure is higher than for non-disabled claimants. The National Housing Federation estimates that about 108,000 tenants in social rented properties adapted specifically for their needs are likely to be affected by the introduction of the size criteria to restrict housing benefit. If such tenants were forced to move into properties unsuited to their needs this might risk breaching their Article 8 rights to respect for private or family life as well as being potentially discriminatory.

The Government has indicated that it is prepared to look at exemptions for individuals who are disabled, where their homes have been subject to extensive adaptations. However, this would not address the disruption to patterns of caring and support networks which can be vital.

We recommend allowing some additional discretion to exempt disabled people facing exceptional hardship from the under-occupation provisions.<sup>23</sup>

In 2013, the UN Special Rapporteur on adequate housing, Raquel Rolnik, undertook an official visit to the UK to examine the realisation of the right to adequate housing in accordance with existing international human rights standards. Her final report, presented to the 25<sup>th</sup> session of the UN Human Rights Council, was published on 30 December 2013. In her report, Rolnik recommended the immediate suspension of the under-occupation deduction, saying:

The Special Rapporteur regrets that some policies and practices which have resulted in the progressive realisation of the right to adequate housing are being eroded, and that the structural shape of the housing sector has changed to the detriment of the most

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<sup>21</sup> DWP, [Housing Benefit: Size Criteria for People Renting in the Social Rented Sector – Equality Impact Assessment](#), 2012, sections 42-7.

<sup>22</sup> Data from [DWP Stat-Xplore](#)

<sup>23</sup> Human Rights Joint Committee, *Legislative Scrutiny: Welfare Reform Bill*, 21<sup>st</sup> report of Session 2010-12, paras 1.64-6.

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vulnerable. She expresses her concern that recent measures are contributing also to an increased vulnerability of those who, until a few years ago, were protected.

[...]

In particular, the removal of the spare-room subsidy should be suspended immediately and be fully re-evaluated in light of the evidence of its negative impacts on the right to adequate housing and general well-being of many vulnerable individuals and households.<sup>24</sup>

The Government described her findings as 'partisan' and 'misleading'.<sup>25</sup>

The DWP published its own [Evaluation of Removal of the Spare Room Subsidy: final report](#) in December 2015. This report acknowledged that disabled people had experienced particular difficulties in downsizing:

These [difficulties] related to finding a property that meets their needs as well as in packing and transporting belongings.<sup>26</sup>

### The position in Scotland

The Scottish Government was, and is, opposed to the under-occupancy deduction and took action to fully mitigate the impact of the Housing Benefit deduction through DHPs.<sup>27</sup>

Under the *Scotland Act 2016* the Scottish Government has gained new powers relating to the housing element of Universal Credit, including the variation of the under-occupancy deduction and a commitment has been made to use these powers to abolish the Housing Benefit deduction as soon as possible.

## Legal Challenges

There have been a number of legal challenges in relation to the under-occupancy deduction from Housing Benefit. As previously noted, a [Supreme Court judgment](#) (November 2016) held that where a disabled child needs an overnight carer, and where adult partners are unable to share a room due to disability, a clear medical need for an additional room may be established. Regulations to implement the judgment are awaited. Some of the other issues considered in legal challenges are outlined below.

### Spare rooms and the storage of disability related equipment

Some tribunal decisions have considered whether a room used to store equipment related to an occupant's disability should be disregarded for the purpose of the under-occupation deduction.

In one such case, a housing association tenant who was blind successfully argued that the room had never been used as a bedroom and was in fact used to store equipment related to his disability. Prior to

<sup>24</sup> UN General Assembly, [Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik](#), 30 December 2013.

<sup>25</sup> *Inside Housing*, '[UN housing expert's report calling to end bedroom tax slammed](#)', 4 February 2014.

<sup>26</sup> DWP, [Evaluation of Removal of the Spare Room Subsidy: final report](#), 2015, p72.

<sup>27</sup> The Scottish Government, [Housing Benefit Reform](#), [accessed 10 February 2016]. See also SPICe Briefing 14/67, [The "Bedroom Tax"](#), 6 October 2014.

the tenant moving in, the property had been adapted to take account of his need for a room to use for reading and other equipment, thus the court found that it had never been the landlord's intention that the room be used as a bedroom and finding the term bedroom was not defined in law, applied the ordinary English meaning.<sup>28</sup>

However, in a case in Middlesbrough, the tribunal did not accept that a spare bedroom should be discounted on the basis that it is used to store disability related equipment, instead finding, 'all aids could reasonably be stored elsewhere.'<sup>29</sup> Likewise, several tribunal cases heard in Scotland have agreed that disability related equipment did not have to be stored in a spare bedroom.<sup>30</sup>

In another case concerning a tenant who needed an additional bedroom for storage and as a dressing room due to her disability, the Glasgow First-Tier Tribunal had found discrimination in the application of the deduction under Article 14 of ECHR. However, this was overturned by the Upper Tribunal following the decision in *MA & Ors*.<sup>31</sup>

### **Disabled children sharing a room**

Although the Government introduced an exemption for disabled children deemed unable to share a bedroom as a result of disability, this is restricted to children who are eligible for the middle or higher rate care component of Disability Living Allowance (DLA).<sup>32</sup> The [Social Security Advisory Committee](#) (SSAC) considered the regulations implementing this exemption. In a report, the SSAC expressed concerns over the potential to exclude cases where a child has a disability and a genuine need for an additional bedroom, but does not receive the qualifying level of DLA.<sup>33</sup> The committee recommended that:

- The exemption be extended to include children on the lower rate care component of DLA.
- The legislation be amended to include an 'exemptions process' for those who did not automatically apply but were able to satisfy a local authority that it would be inappropriate for the disabled child to share a bedroom.

The Government rejected the SSAC's recommendations, saying they were, 'looking to cover a discrete group of severely disabled children, and not to open up a broader exemption for children with disabilities.' Using the middle and higher rate of the DLA care component was, they argued, 'a clear and consistent test of severe disability.'<sup>34</sup> The Government accepted that there may be rare circumstances where disabled children may not qualify for the relevant DLA award but could

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<sup>28</sup> *Guardian*, '[Bedroom tax defeat for Westminster council in landmark case](#)', 26 September 2013.

<sup>29</sup> First-Tier Tribunal Decision Notice SC227/13/03378.

<sup>30</sup> First-Tier Tribunal Decision Notices [SC108/13/01445](#) and [SC108/13/01362](#).

<sup>31</sup> *Nearly Legal*, '[Bedroom Tax: Upper Tribunal on Article 14](#)', 6 October 2015.

<sup>32</sup> This exemption followed the Court of Appeal's decision in [Burnip v Birmingham City Council](#) [2012] EWCA Civ 629; see also DWP [HB Bulletin U2/2013](#).

<sup>33</sup> SSAC and DWP, [Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2013](#), 2013.

<sup>34</sup> *Ibid.* Government response, pp8-9.

not share a bedroom, but pointed to the use of Discretionary Housing Payments as appropriate mitigation:

In the circumstances, and given analysis of the data available we are confident that the chosen gateway, based on entitlement to the middle or highest rate of the DLA care component is a sensible and reasonable one.<sup>35</sup>

The proposal on introducing an 'exemptions process' was similarly rejected on the basis that it would act to effectively remove the existing exemption rules:

The Department also believes that were the allocation of an additional room to be on the basis of a Local Authority decision, decision makers would be unlikely to have sufficient medical expertise to be able to confidently arrive at a diagnosis of disability... This could lead to unintentional inequalities. It would also be particularly difficult to operate in Universal Credit.<sup>36</sup>

### **Discretionary Housing Payments**

Where an individual is eligible for Housing Benefit, but experiences a shortfall between the rent due and the benefit payable, they may apply to the local authority for a Discretionary Housing Payment (DHP).

There is no obligation on authorities to pay DHPs and although the DWP has issued [guidance for local authorities](#) (updated in December 2016), the method of allocation and the decision making process lies with the individual authority.

Increasing the level of funding for DHPs is one of the ways the Government has sought to mitigate the impact of Housing Benefit reforms. The Coalition Government made available additional funding of £25m in DHPs for disabled people who live in significantly adapted accommodation and are affected by the under-occupation deduction; this funding has continued as part of DHP allocations.<sup>37</sup> The Minister for Work and Pensions in the Coalition Government explained:

Trying to define in legislation that this or that type of adaptation was or was not exempt was very complex. Rather than having a blanket exemption simply for a ramp or a stair rail, we have allocated money to local authorities, which broadly matches what we think would be the cost of protecting people in the circumstances that the hon. Gentleman has described – for example, a wheelchair user who has had significant adaptations made.<sup>38</sup>

However, questions have been raised around whether this funding is reaching claimants for whom it is intended. Particular concern has arisen in relation to local authorities taking disability benefits into account when assessing applications for DHPs. The initial DWP guidance gave authorities the option of disregarding these benefits, but the final

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<sup>35</sup> Ibid.

<sup>36</sup> Ibid. p9.

<sup>37</sup> Note that DHP funding is not ring-fenced for particular groups of applicant within a local authority.

<sup>38</sup> [First Delegated Legislation Committee](#) 16 October 2012 c7.



decision rests with the authority.<sup>39</sup> This issue was highlighted in independent research carried out on behalf of the DWP:

A key concern raised by landlords and local agencies is that disabled people in adapted homes have not always been awarded DHP because disability benefits, which are intended to help with some of the extra costs of having a long-term disability or health condition, can cause them to fail means tests based on their income. Local agencies are also concerned about some groups who fail to apply for DHP, or fail to adequately evidence their application, especially those with mental health difficulties. More than half (56 per cent) of RSRS-claimants surveyed who have not applied for DHP said they were not aware of it. The claimants who were unaware of DHP were similarly likely to other claimants to report having difficulties paying rent and similarly likely to be in arrears.<sup>40</sup>

Despite this, the research found that a 'large majority of local authorities reported that they always carried out a means test, and most of these included [Disability Living Allowance] where they deemed it appropriate to do so.'<sup>41</sup>

The Work and Pensions Select Committee urged the Government to issue revised guidance to local authorities to disregard disability benefits in means tests for DHPs.<sup>42</sup> This position was strengthened by a High Court ruling. In *R (on the application of Hardy) v Sandwell Metropolitan Borough Council*, the court held that the council's policy of always taking account of Disability Living Allowance when assessing DHP awards was based on a misunderstanding of the DHP guidance and constituted a failure to exercise discretion, fettering any future exercise of that discretion. Furthermore, the policy was found to be discriminatory towards disabled people contravening the council's duty under the *Equality Act 2010*.<sup>43</sup> The updated DHP guidance advises authorities to take account of the High Court ruling.

Evidence has also been heard from Carers UK and Homeless Link of a reluctance amongst some local authorities to grant DHPs to claimants who do not have an 'exit strategy' such as moving house or entering work.<sup>44</sup> Others have suggested that authorities are using DHPs as a long term solution for households who cannot move, such as those in adapted accommodation, and the need for those claimants to make repeat applications represents a source of anxiety.<sup>45</sup>

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<sup>39</sup> DWP, Discretionary Housing Payments guidance manual, April 2014, para 3.9.

<sup>40</sup> DWP, [Removal of the Spare Room Subsidy: Interim Evaluation Report](#), July 2014, p15.

<sup>41</sup> *Ibid.*, p42.

<sup>42</sup> Work and Pensions Committee, [Support for Housing Costs in the Reformed Welfare System](#), 4<sup>th</sup> report of Session 2013-14, HC720, para. 141.

<sup>43</sup> [2015] EWHC 890 (Admin). This decision had implications for other councils who had similar policies (estimated to be three quarters of all councils). The DHP guidance was updated in August 2015 advising councils to take account of the Hardy decision.

<sup>44</sup> Work and Pensions Committee, [Support for Housing Costs in the Reformed Welfare System](#), 4<sup>th</sup> report of Session 2013-14, HC720, para. 142.

<sup>45</sup> *Ibid.*

The Government has suggested they want to give confidence to authorities to make long-term awards where appropriate.<sup>46</sup> However, the Work and Pensions Committee declared this, 'not strong or explicit enough', and recommended new guidance making clear the Government's support for long-term awards avoiding the need for repeat applications for certain categories of claimant. The Committee also called for the impact of these long-term awards to be taken into account when deciding on DHP funding beyond 2014/15, favouring a three year funding period to aid effective planning.<sup>47</sup> The Government's response has not yet been published, but the updated DHP guidance does contain specific reference to long-term or indefinite awards being made in certain circumstances.<sup>48</sup>

Concerns over the impact of cuts to Housing Benefit on people with disabilities and the variable response to DHP applications have been raised in several research studies. The Joseph Rowntree Foundation noted:

Councils are making full use of Discretionary Housing Payments (DHPs) to help tenants adjust to this change. However, practice varies. There are concerns about whether DHP provisions are appropriate for disabled tenants living in adapted homes.<sup>49</sup>

The London Assembly Housing Committee called for greater clarity on the future funding of DHPs, and questioned whether they are an appropriate form of assistance for claimants with long term needs.<sup>50</sup>

### Government response to UN Committee's findings on Housing Benefit

The [Government's response](#) to the findings on Housing Benefit argues that the Removal of the Spare Room Subsidy (RSRS) was done in order to equalise the size criteria rules for the social and private rental sector. It also states that the effect on disabled people has been mitigated by DHPs and the additional bedroom allowance for disabled children and non-resident overnight carers. The Government rejects the report's claim that RSRS has resulted in increased evictions, citing a two-year independent evaluation, undertaken by Ipsos MORI and the Cambridge Centre for Housing and Planning Research.<sup>51</sup>

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<sup>46</sup> HB Circular S1/2014.

<sup>47</sup> Work and Pensions Committee, [Support for Housing Costs in the Reformed Welfare System](#), 4<sup>th</sup> report of Session 2013-14, HC720, para. 145.

<sup>48</sup> DWP, [Discretionary Housing Payments guidance manual](#), December 2016, para. 5.3. The previous Minister for Work and Pensions, Mark Harper, explained the delay in response was, 'due to a failure to secure agreement across the Government... I am afraid harmony has not broken out and until it does, the Government will not be able to respond to the Committee.' [HC Deb 3 March 2015 c878].

<sup>49</sup> Joseph Rowntree Foundation, [Housing Benefit Size Criteria: impacts for social sector tenants and options for reform](#), 2014.

<sup>50</sup> London Assembly Housing Committee, [Assessing the Consequences of Welfare Reform](#), 2014, para 2.45.

<sup>51</sup> UK Government Response to the Report by the UNCRPD under article 6 of the Optional Protocol to the Convention, p.12, paragraphs 34-35

## Other benefits

### Report findings

The report states that other changes to the welfare system, particularly the “establishment of a cap on household benefits” and changes to the eligibility criteria of the mobility component of Personal Independence Payment (PIP) have disproportionately affected disabled people, and have “hindered various aspects” of their rights under article 19.<sup>52</sup>

### Policy background – benefit cap

In 2013, the Coalition Government introduced a cap on the total amount of household benefits a person could receive. This was set initially at £500 per week for a family and £350 for a single person (or £26,000 and £18,200 annually, respectively). The current Government has reduced the cap further. In London the cap is now £23,000 for families and £15,410 for single people, and elsewhere the cap is £20,000 for families and £13,400 for single people.

Claimants in receipt of certain disability related benefits are exempt from the cap:

- Disability Living Allowance or Personal Independence Payment
- Attendance Allowance
- Industrial Injuries Benefits
- Armed Forces Compensation Scheme
- Armed Forces Independence Payment
- Employment and Support Allowance (if in receipt of the support component)

In addition, when calculating the maximum amount of welfare benefit entitlement, an authority must ignore any Housing Benefit paid in respect of certain kinds of supported accommodation.

Nevertheless, the Equality Impact Assessment for the original benefit cap estimated that around half of households who would lose from the policy would contain somebody classed as disabled under the Equality Act.<sup>53</sup>

While many disabled claimants are exempt from the cap as a result of receiving one of the benefits listed above, issues arose in relation to non-exempt carers. In a case considered by the High Court in 2015, it was held that the Government’s failure to exempt those caring for severely disabled adult family members from the Benefit Cap was unlawful because it amounted to indirect discrimination against disabled people and was incompatible with ECHR article 14.<sup>54</sup> The Department for Work and Pensions said that it would consider the judgement and explain its position in due course.

In Parliamentary debate on the *Welfare Reform and Work Bill 2015-16* in the Lords, two amendments were moved to exempt people in receipt

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<sup>52</sup> UNCRPD Report, pp.17-18

<sup>53</sup> DWP, [Benefit Cap Equality impact assessment](#), July 2012, p8

<sup>54</sup> [Hurley v Secretary of State for Work and Pensions](#) [2015] EWHC 3382 (Admin).

of carer’s allowance or disability benefits from the cap.<sup>55</sup> In response to the first amendment, which was withdrawn, Lord Freud made reference to the High Court decision saying the Government were considering it closely and he would be able to report back to the House at a later date.<sup>56</sup> When the second amendment was moved, Lord Freud announced that the Government intended to exempt all recipients of carer’s allowance from the benefit cap.<sup>57</sup> The Government amendment to give effect to this commitment was brought forward at the Third Reading of the Bill in the House of Lords.<sup>58</sup>

Since 7 November 2016 households containing someone entitled to Carer’s Allowance or the carer element in Universal Credit have been exempt from the cap.

More information on the benefit cap is available in the House of Commons Library briefing, [The Benefit Cap](#), SN06294.

**Policy background – changes in eligibility for the mobility component under PIP**

**Personal Independence Payment**

PIP is a non-means tested, non-taxable benefit payable whether in or out of work to help with the extra cost arising from ill health or disability. PIP replaces DLA for people of working age (16 to 64). People aged 65 or over on 8 April 2013 continue to get DLA.

PIP consists of two components, both payable at two rates, ‘standard’ or ‘enhanced’:

- A mobility component based on an individual’s ability to get around.
- A daily living component based on an individual’s ability to carry out key activities necessary to participate in daily life.

Weekly rates April 2017	Standard	Enhanced
Mobility	£22.00	£58.00
Daily Living	£55.65	£83.10

There is no automatic entitlement for particular conditions (although existing DLA rules for people with terminal illness are carried over to the new benefit). Instead entitlement is determined by a, ‘new, fairer, objective assessment of individual need,’ to ensure support is ‘targeted on those individuals whose health condition or impairment has the greatest impact on their day-to-day lives.’

Advice from an ‘independent healthcare professional’ is integral to the assessment process: in most cases this involves a face to face meeting with the claimant.

All PIP awards are subject to a periodic review.

Personal Independence Payment (PIP) was introduced for new claims from April 2013, but for most existing DLA claimants the reassessment process did not begin until July 2015. Reassessment gradually extended to further postcode areas so that by late 2017 all remaining working age DLA claimants will have been invited to claim PIP.<sup>59</sup>

<sup>55</sup> [HL Deb 21 December 2015 c2362](#) and [HL Deb 25 January 2016 c1092](#).

<sup>56</sup> [HL Deb 21 December 2015 c2363](#).

<sup>57</sup> [HL Deb 25 January 2016 c1094](#).

<sup>58</sup> [HL Deb 9 February 2016 c2121](#)

<sup>59</sup> See DWP, [Timetable for PIP replacing DLA](#), updated 26 August 2015.

The Coalition Government believed that Personal Independence Payment would have certain advantages over Disability Living Allowance:

- It would target support more closely on those most in need of support
- It would be more responsive as claimants' circumstances change
- It would be based on a fairer, more transparent and consistent assessment of need
- It would be easier for claimants, DWP staff and disability organisations to understand<sup>60</sup>

From the outset the Coalition Government also made it clear that a key aim for the new benefit was the need to make savings and reduce the working age caseload for disability benefits. PIP was originally expected to reduce working-age DLA caseloads and expenditure by 20 per cent, giving savings of around £1.5 billion a year by 2016-17. Revised estimates published by DWP in December 2012 suggested that, by 2018, around 607,000 fewer people would receive PIP than would have got DLA – a 28% reduction in the caseload. However, in its March 2016 *Economic and fiscal outlook* report, the Office for Budget Responsibility estimated that savings from PIP would be considerably lower than originally expected. In December 2012, the OBR estimated savings from the introduction of PIP of £3.0 billion by 2017-18, but based on emerging data on reassessment outcomes it now estimated that savings would be almost **90% lower at £0.4 billion**. This implies savings of around 5% rather than the original 20% savings sought by the Government.<sup>61</sup>

#### *Eligibility Criteria*

The Coalition Government said that the assessment for PIP was designed to provide, 'a more holistic assessment of the impact of a health condition on an individual's ability to participate in everyday life.' It covers sensory impairments, developmental needs, cognitive impairments and mental conditions, as well as physical disabilities.<sup>62</sup>

Disability organisations expressed concern however that in certain respects the PIP criteria were more restrictive than those for DLA and that the assessment did not acknowledge some support needs. For example, in its submission to the DWP consultation on the PIP assessment criteria and thresholds, Disability Rights UK said that the criteria did not adequately acknowledge:<sup>63</sup>

- Help needed by some people to move around indoors, e.g. when using stairs or getting in and out of bed.

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<sup>60</sup> National Audit Office, [Personal Independence Payment: early progress](#), HC 1070 2013-14, 27 February 2014, para 1.5. See also Commons Library briefing SN05869, [Disability Living Allowance reform](#)

<sup>61</sup> OBR, [Economic and fiscal outlook](#), Cm 9212, March 2016, para 4.116

<sup>62</sup> DWP, [Personal Independence Payment: initial draft of assessment criteria](#), May 2011.

<sup>63</sup> Disability Rights UK, [PIP assessment criteria and thresholds consultation: our response](#).

- The need for general supervision to keep people safe, e.g. where individuals may be in danger of injuring themselves or at risk of self-harm.
- People who need assistance at night time.

There is particular concern about the criteria for the enhanced mobility component. In the final draft of the PIP regulations, individuals qualified for the enhanced rate mobility component if they could only move short distances of no more than 20 metres, rather than 50 metres as in previous drafts of the PIP assessment criteria. This rule is expected to result in significant numbers of people who were receiving the higher rate DLA mobility component failing to qualify for the enhanced rate mobility component in PIP. For those using the Motability scheme, this would result in their adapted vehicle being withdrawn.

There are as yet no published statistics on the number of higher rate DLA mobility claimants failing to qualify for enhanced rate PIP mobility on reassessment.<sup>64</sup> One source suggests however that Motability itself expects around 35,000 adapted vehicles to be returned in 2016 as a result of PIP.<sup>65</sup>

On 30 November 2016 the Minister for Disabled People, Health and Work, Penny Mordaunt, said that the Government was, among other things, looking at ways to enable people to keep their Motability vehicle pending an appeal against a PIP decision, and exploring options to allow those not in receipt of the enhanced rate mobility component to have access to the Motability scheme.<sup>66</sup> No further announcements have been made.

Further information on the PIP mobility component eligibility criteria and on the implications of PIP for DLA claimants with Motability vehicles can be found in Commons Library briefing SN00473, [Motability scheme](#).

Section 3.4 below covers further developments relating to the PIP eligibility criteria and reassessments.

### **Government response to findings on other benefit changes**

The Government's response to the Committee's findings on the changes to other benefits points to the exemption from the benefit cap and benefit freeze for households in which someone claims is eligible for a disability-related benefit. It argues that these exemptions were introduced following implementation, as disproportionate impacts on disabled people were noted.<sup>67</sup>

### **Social care Report findings**

The report argues that cuts to social care services negatively and disproportionately affect disabled people and obstruct their ability to live

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<sup>64</sup> PQ 56364 [on Motability], 12 December 2016

<sup>65</sup> "[PIP reassessments mean 35,000 will lose Motability vehicles in 2016](#)," Disability News Service, 14 July 2016

<sup>66</sup> HC Deb 30 November 2016 c610WH

<sup>67</sup> UK Government Response, p.23

independently, as required by article 19. In particular, the report states that the closure of the Independent Living Fund (ILF) to new claimants in 2010, and to all claimants in 2015, led to a substantial reduction in the level of support provided by local authorities to former claimants.

The committee also points to the tightening of eligibility criteria to access social care services, and the reduction in personal care packages, claiming that it has adversely affected individuals with disabilities to the extent that they are no longer receiving the level of care required.

The Committee also said that it had “received evidence that personal budgets do not necessarily allow persons with disabilities to have access and control over social care services and restrict the level of personal assistance they receive”.<sup>68</sup>

### **Policy background**

The Independent Living Fund (ILF) was a central Government resource dedicated to the financial support of disabled people, enabling them to choose to live in the community rather than in residential care. It was sponsored by funding from the Department for Work and Pensions (DWP).

In 2010, it was announced that the fund would be closed to new applicants, but would continue for existing recipients, at least for the duration of the 2010-2015 Parliament. Following a consultation exercise, the Coalition Government announced in 2012 that from March 2015 (subsequently revised to June 2015 following a legal challenge), the ILF would be closed, and that the responsibility for supporting former ILF claimants would be transferred to the devolved administrations, and to local authorities in England.<sup>69</sup>

### **Government response**

In its response to the CRPD report, the Government states that it closed the ILF in order to “integrate users with the mainstream social care system” and that “former ILF users now have statutory protection for their eligible care and support needs, whereas previously they may have relied on the ILF discretionary trust. LAs are being fully funded for this, for at least the remainder of this Parliament”.

In addition, the *Care Act 2014* “places a duty on English LAs to assess any adult with care and support needs, and to meet the needs of people assessed as eligible for support. This mandates minimum standards, not minimum spending, because the Government believes the quality of care is what matters”.

In terms of the eligibility criteria, the Government response stated that the *Care Act 2014* “introduced a new national eligibility threshold for access to adult social care, implemented on 1 April 2015, which sets the minimum level of access to care at the level where a person’s needs have a significant impact on their wellbeing. All LAs must now meet, or

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<sup>68</sup> UNCRPD Report, pp.17-18

<sup>69</sup> Commons Library briefing, [The closure of the Independent Living Fund \(ILF\)](#), (7787)

exceed, this threshold” and that “LAs [local authorities] should not set arbitrary upper limits on expenditure to meet a person’s care needs; doing so would not be person-centred or compatible with public law”.<sup>70</sup>

### 3.3 Article 27 – Work and employment

#### Employment and Support Allowance

##### Report findings

The CRPD states that it viewed evidence indicating that there are flaws in the Employment and Support Allowance (ESA) system, in particular relating to the Work Capability Assessment (WCA) which determines eligibility. The Committee notes that, despite several adjustments, the WCA remains focused on a “functional evaluation of skills and capabilities” and does not fully take into account individual circumstances and requirements. It states that people with disabilities faced “significant hardship, including financial, material and psychological” when undergoing assessments. It also points to the fact that during the period covered, a “significant number” of assessments were overturned following appeals to tribunals.

The report also notes the significant increase in the number of ESA claimants sanctioned between 2012 and 2014, and evidence that they had been applied “in a disproportionate manner.” It also highlights evidence of the impact of sanctions, including indebtedness, reliance on the support of relatives or food banks, and reduced access to essential services.

The Committee observes that the situation of ESA claimants found “fit for work” is not monitored as such, but highlights the danger of those subsequently claiming Jobseeker’s Allowance being subject to conditionality and sanctions without account being taken of the additional challenges caused by disability.

The report also flags up the issue of claimants’ deaths following assessments. It states that the UK Government said that it did not monitor such deaths, but that the inquiry found that information had been released, and that evidence from official sources showed that 33 deaths following assessments were being examined. The UK Government denied the existence of any causal link. The Committee notes that it is “not aware of any attempts at objective, thorough, open and impartial investigation regarding those deaths by an independent body.” However, DWP did publish 49 redacted internal reviews in response to a Freedom of Information (FOI) request, but the Government has been clear that these cases represent a very small proportion of deaths of benefit claimants, and did not represent a monitoring process.<sup>71</sup>

##### Policy background

Employment and Support Allowance (ESA) is an income replacement benefit for people with a health condition or disability which means that

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<sup>70</sup> UK Government response, p.13

<sup>71</sup> UNCRPD report, pp.18-19



they are unable to work. ESA is intended to cover day to day living costs. It can be distinguished from disability benefits such as Disability Living Allowance and Personal Independence Payment which help with the extra costs of disability and are payable whether in or out of work.

Employment and Support Allowance replaced incapacity benefits for people making new claims from October 2008. There are two forms: contributory ESA, for those with sufficient National Insurance contributions; and income-related ESA, which is means-tested.

To be eligible for ESA, a person must undergo a Work Capability Assessment (WCA). Claimants are assessed during the first 13 weeks of their claim (or longer if necessary) to determine whether they have a 'limited capability for work', and also whether they are capable of engaging in 'work-related activity'. This second part of the assessment determines whether the person is placed in the Support Group or the Work-Related Activity Group (WRAG). Claimants in the WRAG may be expected to take part in Work Focused Interviews and undertake work-related activity which could include taking part in the Work Programme. Failure to do so could result in a benefit sanction.<sup>72</sup>

ESA did not initially affect people receiving existing "legacy" incapacity benefits (Incapacity Benefit, Severe Disability Allowance or Income Support), but from 2010 around 1.5 million incapacity benefit claimants began to be reassessed for ESA. The incapacity benefit reassessment programme was to have been completed by spring 2014, but problems with the DWP's medical services contractor, Atos Healthcare, led to delays and backlogs.<sup>73</sup> In March 2014, the DWP announced the early exit of Atos from the DWP contract. A new Medical Services contractor, Maximus, took over on 1 March 2015.

There have been significant changes to the structure of ESA since its introduction. The Coalition Government limited receipt of contributory ESA to 12 months for claimants in the Work-Related Activity Group (WRAG), on the grounds that for WRAG claimants ESA was never intended to be a long-term benefit. Welfare rights and disability organisations argued however that the time limit undermined the contributory principle and would result in greater poverty and financial distress for people with long-term conditions. The Government estimated that around 700,000 people would be affected by the time limit, of whom 280,000 would lose ESA completely after 12 months because, for example, they had other income or savings, or a partner in work. Further information is given in Commons Library briefing SN06305, [Time limiting of contributory Employment and Support Allowance from 30 April 2012](#).

As a result of measures in the *Welfare Reform and Act 2016*, the additional Work-Related Activity Component for ESA WRAG claimants (and the equivalent addition in Universal Credit) – worth £29.05 a week – is to be abolished for new claims from April 2017. The Government

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<sup>72</sup> For further information on ESA and benefit rules see Commons Library briefing, [Employment and Support Allowance: An Introduction](#), 7181.

<sup>73</sup> See Commons Library briefing, [Incapacity Benefit Reassessments](#), 6855.

argues that this will “remove the financial incentives that could otherwise discourage claimants from taking steps back to work,” but savings of £450 million a year are also expected by 2020-21. The changes were widely criticised by disability charities; the idea that the additional component is a disincentive to seek work has been particularly disputed. Alongside abolition of the WRAC, the Government announced “new funding for additional support to help claimants return to work”; further details were set out in the October 2016 Work, Health and Disability Green Paper, [Improving Lives](#).<sup>74</sup> The Work and Pensions Committee has called on the Government to set out clear plan for how it will financially support disabled people, before the cuts to ESA are implemented.<sup>75</sup> Further details are given in Commons Library briefing CBP-7649, [Abolition of the ESA Work-Related Activity Component](#).

#### *Work Capability Assessment (WCA)*

The WCA is based on the principle that a health condition or disability should not automatically be regarded as a barrier to work and work itself can have benefits. It has been controversial from the outset.

Welfare rights and disability organisations have voiced concerns about aspects of the test and about the way it has been applied. There has been particular concern about how the test takes account of mental health problems and fluctuating conditions, and about the conduct of medical examinations undertaken by Atos (who have been subsequently replaced by Maximus) Health Care Professionals (HCPs) on behalf of the DWP.

The decision on entitlement to ESA is made by DWP Decision Makers, who should take into account all the available evidence and do not have to follow the HCP’s recommendation.<sup>76</sup>

Changes have been made to the WCA following internal reviews, and the Government has also accepted most of the recommendations made by the five annual independent reviews (the first three by Professor Malcolm Harrington, and the last two by Dr Paul Litchfield). However, despite changes made to the WCA since its introduction, it still attracts strong criticism. Problems highlighted by disability and welfare rights organisations include, amongst other things:

- The number of claimants with serious health conditions or disabilities who are found ‘fit for work’ or placed in the wrong ESA group, due to deficiencies with the WCA descriptors or in the assessment process.

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<sup>74</sup> Cm 9342

<sup>75</sup> Work and Pensions Committee, [Disability employment gap](#), HC 56 2016-17, 31 January 2017

<sup>76</sup> Further information is available from the Commons Library briefing SN05850, [The Work Capability Assessment for Employment and Support Allowance](#)

- The difficulties faced by certain groups, and in particular people with mental health conditions or learning disabilities, in navigating the WCA process.<sup>77</sup>
- The lack of information about outcomes for individuals following fit for work determinations, and concerns about the risk of poverty and destitution as a result of incorrect decisions.
- The relatively high success rate for appeals against ESA decisions.<sup>78</sup>
- Difficulties experienced by claimants seeking to challenge fit for work decisions, including the fact that ESA is not payable pending a 'Mandatory Reconsideration' of the decision by the DWP, meaning that the only option in the meantime is to claim Jobseeker's Allowance, potentially exposing the individual to inappropriate conditionality.
- The impact of assessments, frequent reassessments, and poor decision making on the physical and mental health of claimants.

In its July 2014 report on [Employment and Support Allowance and Work Capability Assessments](#), the Work and Pensions Committee concluded:

- ESA was not working as well as it should, particularly in terms of achieving the intended employment objectives for claimants.
- Outcome groups were too simplistic, with the WRAG becoming a catch-all group for those who failed to meet the conditions for the Support Group, but were not seen as fit for work.
- The focus on returning to work within a relatively short period of time was not appropriate for many of these claimants.
- The WCA failed to provide an accurate assessment of a claimant's individual health-related employment barriers, or their distance from the labour market.<sup>79</sup>

The Committee recommended a fundamental redesign of the ESA process, including a reassessment of the application and effectiveness of the WCA descriptors to make them more responsive, particularly for claimants with progressive and fluctuating conditions, and those with

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<sup>77</sup> In December 2013 the Court of Appeal upheld an earlier decision of the Upper Tribunal ([2013 UKUT 260 AAC](#)) that claimants with mental health conditions, learning disabilities and autism faced a "substantial disadvantage" going through the WCA process. Subsequent proceedings did not compel DWP to make specific changes to the WCA, but DWP has been working with Maximus to trial appropriate "reasonable adjustments"; see [PO 14051 \[on WCA: Mental Illness\], 5 November 2015](#). See also Mind, the National Autistic Society and Rethink Mental Illness, [Judicial Review - FAQs](#)

<sup>78</sup> The situation is complicated by the introduction of the "Mandatory Reconsideration" process in October 2013. The number of ESA MRs registered has grown steadily, with 16,600 registrations in October 2016. Only 11% of ESA MRs cleared in October 2016 resulted in the decision being revised. The introduction of MR resulted in a dramatic reduction in the volume of ESA "fit for work" appeals – from around 20,000 a quarter to under 5,000 a quarter. Of ESA fit for work decisions reaching, figures for the latest quarter show 58% of decisions overturned. See DWP, [ESA: outcomes of Work Capability Assessments including mandatory reconsiderations and appeals](#), 8 December 2016

<sup>79</sup> [HC 302 2014-15](#).

mental, cognitive and behavioural difficulties. It also recommended that DWP should reintroduce an assessment of health-related employment barriers into the redesigned ESA process.

In its response to the Committee in November 2014, the Coalition Government said that while it recognised that there was scope for improvements to the WCA and accompanying processes, in light of the reviews already taken and changes already agreed, it did not agree that the WCA was a, ‘flawed mechanism,’ for assessing a person’s functional capacity.<sup>80</sup>

However, in a speech given on 24 August 2015, the then Secretary of State for Work and Pensions, Iain Duncan Smith, signalled possible future reforms to both ESA and the Work Capability Assessment, suggesting that the WCA should be reformed to focus, “on what a claimant can do and the support they’ll need - and not just on what they can’t do.”<sup>81</sup> No specific proposals had been put forward by the time Mr Duncan Smith resigned as Secretary of State on 18 March 2016.

Some commentators have suggested reforming the Work Capability Assessment to take account of how a person’s functional impairments affect their ability to work, given who they are. They argue that a broader “real world assessment”, taking into account factors such as skills and qualifications, experience, and age, is possible and would better reflect everyday realities than the existing WCA.<sup>82</sup> Ministers have however questioned whether such a test could be applied fairly.<sup>83</sup>

The current Government’s Work, Health and Disability Green Paper, [Improving Lives](#), published in October 2016, did not propose major changes to the WCA itself but sought views on whether breaking the link between cash entitlement and Jobcentre support would lead to a more “personalised offer of support” for ESA claimants, rather than this being decided by the ESA category the claimant is placed in following the WCA; and how this could work in practice. The Green Paper also sought views on how evidence from different assessments, e.g. for Personal independence Payment, might be shared to help DWP Decision Makers and reduce the burden on claimants.<sup>84</sup>

In October 2016 the Government also announced that it intends to exempt some ESA claimants with the most severe health conditions and disabilities from future reassessments. It is consulting on the criteria for identifying those who should not be reassessed, and the new rules should be in place by the end of 2017. Further information can be

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<sup>80</sup> [Cm 8967](#), November 2014

<sup>81</sup> Iain Duncan Smith, [A Speech on Work, Health and Disability](#), 24 August 2015. For a summary of reactions to the speech see Ben Baumberg, [The end of the WCA? Reaction to IDS’ speech](#), Rethinking Incapacity blog, 3 September 2015

<sup>82</sup> See Ben Baumberg et al, [Rethinking the Work Capability Assessment](#), Demos, March 2015

<sup>83</sup> See the [Work and Pensions Committee evidence session on The role of incapacity benefit reassessment in helping claimants into employment](#), 13 July 2011, Q340. Published as HC 1015 2010-12

<sup>84</sup> Cm 9342, October 2016, chapter 3

found in Commons Library briefing CBP-7820, [ESA and PIP reassessments](#).

### *Conditionality and Sanctions*

ESA claimants in the Support Group are not required to undertake any activities to continue to receive benefit. ESA claimants in the Work-Related Activity Group (WRAG) may be expected to take part in Work-Focused Interviews and undertake work-related activity by advisers in the DWP, or as part of the Work Programme.

'Work-related activity' is activity that makes it more likely that the person will get a job or remain in work. This could include a wide range of activities such as skills training, jobs search support, drawing up a CV, work placements, or work experience. Any requirement must be reasonable taking into account the person's circumstances. A person cannot be required to apply for a job, undertake work, or submit to medical treatment. All work-related activity to be undertaken must be recorded in writing in an action plan.

ESA claimants who fail to attend and participate in Work-focused Interviews, or to undertake work-related activity when required to do so, without good cause, may face a benefit sanction (a reduction in the amount of benefit payable). The sanction amount is 100% of the ESA personal allowance (currently £73.10 a week).

Between the introduction of ESA in October 2008 and September 2016 just under 150,000 sanctions were imposed in ESA claimants, but the monthly rate has fluctuated widely over the period.<sup>85</sup>

Further information on the ESA sanctions regime and on "hardship" provision for sanctioned ESA claimants, can be found in Commons Library briefing CBP-7813, [Benefit Claimants Sanctions \(Required Assessment\) Bill 2016-17](#). The briefing also includes more detailed analysis of ESA sanction statistics.

The Government points out that safeguards are in place to ensure that ESA claimants are not sanctioned inappropriately and to minimise adverse effects on vulnerable groups. However, a [report by the Work and Pensions Committee](#) from session 2014-15 suggested systems may not always work effectively.<sup>86</sup> It noted concerns that the stringency of the ESA regime was not currently balanced by effective support for claimants in the Work Programme, and that there was limited evidence that financial sanctions were effective in moving claimants who were some way from the labour market closer to work.

The [Government's response](#), published on 22 October 2015, accepted in principle the Committee's recommendation of a review of ESA sanctioning in relation to the Work Programme.<sup>87</sup> The then Secretary of State wrote a follow-up response to the Committee in December 2015,

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<sup>85</sup> DWP, [Jobseeker's Allowance and Employment and Support Allowance sanctions: decisions made to September 2016](#), 15 February 2017

<sup>86</sup> Work and Pensions Committee, [Benefit sanctions policy beyond the Oakley Review](#), 5<sup>th</sup> Report of Session 2014-15, HC 814, 24 March 2015.

<sup>87</sup> [HC 557, 2015-16](#).

stating that that officials were “undertaking a number of visits to Work Programme providers to ensure compliance with our policies and processes, and to promote good practice”<sup>88</sup>.

The National Audit Office’s report on [Benefit sanctions](#) published on 30 November 2016 – which looked at sanctioning across all relevant benefits including Jobseeker’s Allowance as well as ESA – concluded that DWP was not doing enough to find out how sanctions affect people on benefits, and recommended that the Department carry out a wide-ranging review of benefit sanctions, particularly as it introduces further changes to labour market support such as Universal Credit.<sup>89</sup> The NAO noted that there were no published studies of the impact of sanctions on ESA claimants.<sup>90</sup> Its own preliminary analysis of Work Programme data suggested that sanctions had less impact on ESA claimants than on JSA claimants (in terms of employment, earnings and time on benefits), but that sanctions reduced claimants’ time in employment, particularly part-time employment. Most of the reduction meant people spent more time claiming, suggesting sanctions may have discouraged some claimants from working.<sup>91</sup>

## Government response

In its response, the Government argues that the report focuses too narrowly on ESA, and does not look at the wider set of employment programmes which cumulatively reflect the available work support for disabled people. The Government also states that the number of disabled people in employment has increased by nearly 500,000 since 2013<sup>92</sup>, and that it has introduced and plans to introduce a number of initiatives which reduce barriers to work and support disabled people’s access to employment.<sup>93</sup>

With regards to incidents of deaths following work capability assessments, the Government response sets out the reasoning behind not monitoring claimants’ deaths:

The Government does not routinely obtain the reason for a person’s death when closing down their benefit account. There is no statutory requirement to inform the DWP of the manner of a person’s death; this only becomes known if the DWP is informed by a family member or solicitor. In cases where it has been alleged that the Department’s actions are linked to the death of a benefit recipient, an internal review is carried out to check whether departmental processes have been correctly followed. If appropriate, this review will make recommendations for possible improvements, but does not seek out or apportion blame.

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<sup>88</sup> [Letter from The Rt Hon Iain Duncan Smith to Frank Field regarding Government commitments from the “Benefit sanctions policy beyond the Oakley Review” report.](#)

<sup>89</sup> HC 628 2016-17

<sup>90</sup> Ibid. para 3.4

<sup>91</sup> Ibid. para 3.10

<sup>92</sup>

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourmarketstatusofdisabledpeoplea08>.

<sup>93</sup> UK Government response, pp.14-15

It then states that the information that was provided to the inquiry represented a small proportion of claimant deaths which met certain criteria.

The Government also points out that it had published mortality data for benefit recipients in August 2015, but that these cannot be used as evidence of a causal link between receiving benefit payments and deaths.<sup>94</sup>

## Work Programme and Jobcentre Plus

### Report findings

The report finds that the Work Programme and Jobcentre Plus, the two main programmes designed to encourage disabled people into paid employment, had “no visible impact” on reducing unemployment.

The report also states that those individuals who had access to other, more successful programmes, saw support reduced, in some cases leading to loss of employment, although it does not specify which programmes.<sup>95</sup>

### Policy Background

During the 2010-2015 parliamentary session, the independent [Sayce review](#) examined how to support disabled people in work. The Coalition Government welcomed the review and supported the central theme that resources should be directed towards disabled people themselves, giving them maximum choice and control in the services they receive.<sup>96</sup>

Currently, people with disabilities in Great Britain may receive back-to-work support through the Work Programme.<sup>97</sup> However, for those whose needs cannot be met through mainstream employment support, [specialist disability employment programmes](#) are available.

From autumn 2017 the Work Programme and Work Choice will be replaced by a new programme of contracted support: the Work and Health Programme<sup>98</sup>. The Government published [Work, Health and Disability Green Paper: Improving Lives](#) on 31 October 2016, outlining the Government’s initial proposals for a wide ranging package of support.

#### *The Work Programme*

The Work Programme is the Government’s main welfare to work scheme. Unemployed people claiming Jobseeker’s Allowance (JSA) or Employment and Support Allowance (ESA) are referred on to the programme by their local Jobcentre Plus, and remain on the programme for up to two years.

ESA is available to individuals who are ill or disabled and require personalised help to get into work or financial support if they are unable to work. Claimants who are expected to be fit for work within

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<sup>94</sup> UK Government response, pp.20-21

<sup>95</sup> UNCRPD Report, p.19

<sup>96</sup> DWP, [Sayce Review response: Government to support thousands more disabled people into mainstream employment](#), 7 March 2012.

<sup>97</sup> Commons Library briefing, [Work Programme: background and statistics](#), 6340.

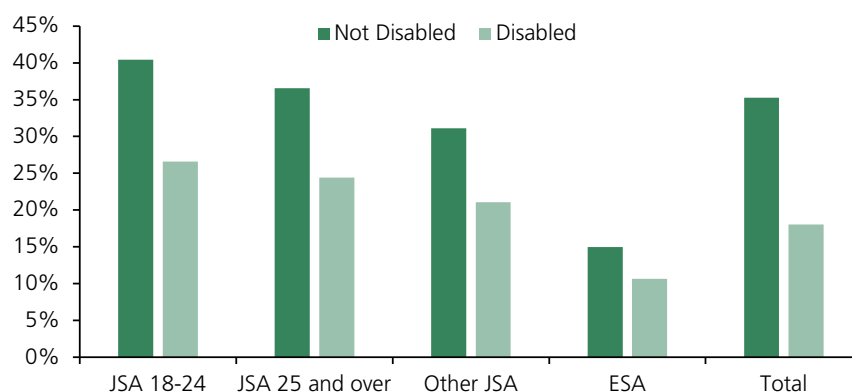
<sup>98</sup> Commons Library briefing, [Work and Health Programme](#), 7845

12 months are referred to the Work Programme on a mandatory basis following a Work Capability Assessment. Claimants who are not expected to be fit for work within this timeframe may join the Programme on a voluntary basis. JSA claimants with a disability are also referred to the Work Programme.

The number of ESA claimants who are eligible for mandatory referral to the Work Programme has been expanded since the programme's introduction as initial referral levels were lower than expected. Between June 2011 and June 2016, around 342,000 ESA claimants have been referred to the Work Programme. Data based on claimants' self-assessment of disability show that to June 2016, 35% of people without a disability have received a job outcome on the Work Programme, compared to 18% of people with a disability.<sup>99</sup>

#### **Job outcomes as a proportion of referrals**

*By work Programme payment group, June 2011- June 2016*



Note: Number of non-disabled ESA claimants is much smaller than number of disabled claimants  
Source: DWP Stat-Xplore

Contracts for the Work Programme will expire in April 2017. It was announced in the Spending Review and Autumn Statement 2015 that the Work Programme would be replaced with a new Work and Health Programme.

The Work and Health Programme will provide specialised support for those unemployed for over two years and, on a voluntary basis, to those with health conditions or disabilities. The Government expects that the majority of people referred to the Programme will be disabled. The Programme will be run by service providers awarded contracts by the Government.

The Programme will target people who with specialist support are likely to be able to find work within 12 months. It takes the place of two existing welfare-to-work schemes, the [Work Programme](#) and [Work Choice](#), although many jobseekers who would previously have been supported by the Work Programme will now receive support directly through Jobcentre Plus rather than the Work and Health Programme.

<sup>99</sup> Commons Library briefing, [Key statistics on people with disabilities in employment](#), 7540



Funding for the Work and Health Programme will be £130 million a year by 2019/20, including funds devolved to Scotland. Aspects of the Programme will also be devolved to local areas.

The Programme forms part of a wider package of employment support for people with disabilities, as outlined in the Government's [Work, Health and Disability Green Paper: Improving Lives](#), published in October 2016.

#### *Jobcentre Plus Support*

Jobcentre Plus delivers support to benefit claimants across all working age benefits. If an adviser feels that a claimant requires specialist support due to a health condition or disability they can be referred to a specialist Disability Employment Advisor (DEA). This support is limited. The Work and Pensions Committee estimate that the ratio of DEAs to ESA claimants in the Work Related Activity Group (WRAG) was 1:600 in 2014.<sup>100</sup> It should be noted that ESA claimants typically attend the Jobcentre no more than twice a year.

After referrals to the Work Programme end in April 2017, more employment support will be delivered through the Jobcentre Plus network than is currently the case. Employment support which is contracted out to service providers (for example, schemes such as the Work and Health Programme) will be "refocussed" to cover a smaller population.<sup>101</sup>

However, the Work and Pensions Committee has expressed its concern "that the resources allocated to the [Work and Health Programme] do not match its ambition":

The DWP's Employment and Health Related Services "Umbrella Agreement", through which prospective Work and Health Programme providers are required to bid, has a total contract value of £1.77 billion. Not all of this will go to the Work and Health Programme, however. The Umbrella Agreement suggests that it will have a budget of £554 million over its lifetime. This is a manifold reduction compared to what it will replace. In comparison, the DWP states that £492 million in total has been spent on Work Choice up to 2015–16 alone, and £2.2 billion had been paid to Work Programme providers as of December 2015. The Department states that it is not possible to calculate the proportion of Work Programme's budget spent on disabled people specifically over the programme's lifetime. External analysis, however, suggests that combined Work Choice and Work Programme spending on disabled people has been approximately £1 billion since 2010.<sup>102</sup>

## Government response

The Government argues that it has recognised the need for a new approach to work support for disabled people, and is pursuing this through the establishment of the Work and Health Unit in DWP, and

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<sup>100</sup> Work and Pensions Committee, [The role of Jobcentre Plus in the reformed welfare system](#), 2<sup>nd</sup> Report of Session 2013-14, p3.

<sup>101</sup> PQ 50117, 25 October 2016

<sup>102</sup> Work and Pensions Committee, [The future of Jobcentre Plus](#), 2 November 2016, p26

the replacement of the Work Programme with the Work and Health Programme. It states that the Work and Health Programme was designed in consultation with disability representative organisations. It then goes on to outline the existing specialised support for disabled people and people with health issues, including Access to Work and the Fit for Work service.<sup>103</sup>

### 3.4 Article 28 – Adequate standard of living and social protection

Overall, the Committee found that changes to the welfare system have had a more negative impact on households with disabled people, particularly those on low incomes. It also states that impact assessments on these changes foresaw that disabled people would be affected by the changes. In particular, the report notes that the transition from Disability Living Allowance (DLA) to Personal Independence Payment (PIP) was expected to reduce the number of people receiving support by 620,000, and that the tightening of eligibility criteria for the mobility component of PIP has led to individuals losing their access to adapted cars, as described in section 3.2. It finds that these changes have curtailed the rights of disabled people to an adequate standard of living and social protection under article 28.<sup>104</sup>

#### Policy background

As outlined in section 3.2 above, the Coalition Government made it clear from the outset that a key aim for Personal Independence Payment was the need to make savings and reduce the working age caseload for disability benefits. PIP was originally expected to reduce working-age DLA caseloads and expenditure by 20 per cent, but in light of emerging data from PIP assessments the Office for Budget responsibility estimated in March 2016 that PIP would yield savings of only around 5% rather than the original 20% savings sought by the Government.<sup>105</sup>

The PIP assessment is intended to provide “a more holistic assessment of the impact of a health condition on an individual’s ability to participate in everyday life.” It covers sensory impairments, developmental needs, cognitive impairments and mental conditions, as well as physical disabilities. It looks at the extent to which the individual is capable of undertaking various activities. For some of the activities, a person can score points to help meet the threshold for PIP if they can only undertake that activity by using an “aid or appliance.” This could include things such as artificial limbs, colostomy bags, walking sticks; and non-specialist aids such as electric tin openers and long-handled sponges.

In December 2015 the Government launched a consultation on possible further changes to PIP.<sup>106</sup> It highlighted that a significant proportion of PIP awards were on the basis of use of aids and appliances, many of

<sup>103</sup> UK Government response, p.15

<sup>104</sup> UNCRPD Report, pp.19-20

<sup>105</sup> OBR, [Economic and fiscal outlook](#), Cm 9212, March 2016, para 4.116

<sup>106</sup> DWP, [Consultation on aids and appliances and the daily living component of Personal Independence Payment \(PIP\)](#), 10 December 2015

which people might be expected to have already, or which could be obtained free of charge or at a one-off cost. It also argued that case law had expanded the scope of aids and appliances to include items which might not be reliable indicators of extra costs. The Government believed these developments were inconsistent with the original policy intent of focusing support on claimants with the greatest needs. It suggested a number of options for limiting payments to reflect actual costs incurred and for tightening the PIP eligibility criteria.

Disability organisations were strongly against the proposals, which they believed would reduce disabled people's financial resilience and ability to live independently. They also questioned the evidence base for the changes and the Government's reasoning concerning the role of the PIP assessment and consideration of the use of aids and appliances. They also criticised the short timescale for consultation responses.

On 11 March the Government announced that, in the light of the consultation, the number points awarded in the PIP assessment would be halved for aids and appliances in relation to the "dressing and undressing" and "managing toilet needs" activities.<sup>107</sup> As a result, 290,000 claimants would no longer receive the daily living component, and a further 80,000 would receive the standard rather than enhanced daily living component. Budget 2016 estimated additional savings of £1.3 billion a year by 2019-20.

Following the resignation of Iain Duncan Smith as Secretary of State for Social Security on 18 March and the appointment of Stephen Crabb as his successor, the Government announced that it would not be proceeding with the PIP changes, would not be seeking alternative offsetting savings, and was not seeking further savings from the welfare budget.<sup>108</sup>

Further information on the aids appliances consultation, on the resignation of Iain Duncan Smith and on subsequent events, is given on Library briefing CBP-7651, [Personal Independence Payment and the March 216 Budget](#).

On 23 February 2017, the Department for Work and Pensions laid before Parliament further regulations<sup>109</sup> amending the Schedule to the principal PIP regulations setting out the PIP eligibility criteria "in order to clarify the drafting and reverse the effect of two recent judgments of the Upper Tribunal, which interpreted that Schedule in ways which the Government did not intend."<sup>110</sup> The first judgment relates to the PIP daily living activity 3 ("managing therapy or monitoring a health condition"); while the second judgment relates to mobility activity 1

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<sup>107</sup> [HCWS611 \[on Personal Independence Payment\]](#), 11 March 2016. See also DWP press release, [Personal Independence Payment consultation response announced](#), 11 March 2016

<sup>108</sup> [Secretary of State for Work and Pensions statement on not going ahead with changes to Personal Independence Payment \(PIP\)](#), GOV.UK, 21 March 2016

<sup>109</sup> [The Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017, SI 2017/194](#)

<sup>110</sup> DWP, [Explanatory Memorandum to The Social Security \(Personal Independence Payment\) \(Amendment\) Regulations 2017](#), para 2.1

(“planning and following journeys”), specifically the assessment scores for those unable to undertake journeys due to psychological distress. An Equality Analysis accompanying the regulations estimates that around 3,000 claimants could ultimately be affected by reversing the effect of the judgment relating to daily living activity 3, while reversing the effect of the mobility activity 1 judgment could affect 336,500 claimants (with 161,500 no longer entitled to any mobility component).<sup>111</sup>

The Government states that failure to reverse the effect of the judgments would have led to “substantial unplanned increases to public expenditure” totalling £3.7 billion cumulatively between 2016-17 and 2021-22,<sup>112</sup> and that the amendments are necessary “to restore the original aim of [PIP], making sure that we are giving support to those who need it most.”<sup>113</sup> In a Written Ministerial Statement the Minister of State for Disabled People, Health and Work, Penny Mordaunt, said:

If not urgently addressed, the operational complexities [resulting from the Upper Tribunal judgments] could undermine the consistency of assessments, leading to confusion for all those using the legislation, including claimants, assessors, and the courts. It is because of the urgency caused by these challenges, and the implications on public expenditure, that proposals for these amendments have not been referred to the Social Security Advisory Committee before making the regulations.<sup>114</sup>

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<sup>111</sup> DWP, [Equality Analysis PIP assessment criteria: Upper Tribunal judgments on daily living activity 3 and mobility activity 1](#), February 2017

<sup>112</sup> “[Changes to Personal Independence Payment regulations](#),” DWP press release, 23 February 2017

<sup>113</sup> [Written Ministerial Statement HCWS495](#), 23 February 2017

<sup>114</sup> *Ibid.*

## 4. What happens next?

Like other UN human rights conventions, the CRPD does not contain any mechanism that allows the Committee to enforce its recommendations. On the [United Nations Enable website](#), the Secretariat for the Convention states:

Human rights conventions do not contain any enforcement mechanism to compel States to comply with the principles of the convention or with the recommendations of the monitoring body, and the implementation of these conventions depends on the commitment of each country.

As the Government's response to the report rejected all the recommendations made, there are no more official steps in the process.

A written parliamentary question which was answered on 17 November 2016 indicates that the Government does not intend to take any action beyond publication of the response:

*UN Convention on the Rights of Persons with Disabilities*

To ask the Secretary of State for Work and Pensions, if he will make an assessment of the implications for his Department's policies of the findings and recommendations of the report of the UN Committee on the Rights of Persons with Disabilities, published on 6 October 2016, entitled Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention.

*Answered by: Penny Mordaunt*

My Department has already reflected on the UN Committee's findings and recommendations as set out in the UK Government response, which was published at the same time as the report.<sup>115</sup>

On 8 March 2017 Lord Henley responded to a question on progress made in implementing the UN Convention on the Rights of Persons with Disabilities:

This Government is committed to ensuring that disabled people in the UK are supported to fulfil their potential. The Office for Disability issues are currently preparing for the UK's upcoming periodic examination, which will consider how the UK is implementing the Convention. As part of this process, the UK Government are engaging with stakeholders about key issues and will respond to the UN Committee's list of issues with a report in summer 2017.<sup>116</sup>

To date, there has been no debate in Parliament on the CRPD report or the Committee's findings.

There is currently one active petition on the topic on the UK Parliament website, titled ['Force the government to act on the eleven recommendations of the UNCRPD report'](#). It currently has around 14,000 signatures. Petitions with over 10,000 responses receive a response from the Government, and petitions with over 100,000

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<sup>115</sup> [Written Question – 52382, 17 November 2016](#)

<sup>116</sup> [Written Question – HL5762, 8 March 2017](#)

signatures are considered for debate in Parliament. In its response to the petition, the Government reaffirms its position on the recommendations in the report, but states that it recognises the need to do more:

However, we do recognise that there is more to do to meet the Convention's ambition of full participation and inclusion, and this Government is committed to continuing progress towards this. Taking employment as an example, our aspiration is for disabled people to get the same opportunities as others to find work while ensuring that people who cannot work because of a disability or health condition receive the support they need. That is why this Government is committed to, and working towards, halving the disability employment gap. The 'Improving Lives' Green Paper seeks views on how to ensure that health and welfare systems support people who can work with better opportunities to stay in employment, while protecting people who can't work, with a view to meeting the Government's ambition.

Further information regarding the inquiry procedure is available from the [OHCHR website](#).

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