



Position Statement

Incorporation of the United Nations Convention on the Rights of Personswith Disabilities

The Scottish Commission for People with Learning Disabilities

December 2020



“An international human rights treaty, like the CRPD, is only as useful as its domestic implementation. So, it is really important that the CRPD is fully incorporated into the laws of Scotland, so that Scottish disabled people can fully benefit from it.”

Rosemary Kayess, Vice-Chair of the UN Committee on the Rights of Persons with Disabilities

Introduction

During 2020, Scotland has taken several key steps forward in becoming a Human Rights Respecting Nation. This includes:

- The establishment of the First Minister’s Task Force on Human Rights
- The publication of the United Nations Convention on The Rights of the Child Incorporation (Scotland) Bill
- The commitment in the Programme for Government¹ to incorporate the Convention on the elimination of Violence Against Women (CEDAW)
- The commitment in the Programme for Government to explore the possibility of incorporation for both United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and The International Convention on the Elimination on All Forms of Racial Discrimination (ICERD).

These changes sit alongside the many positive advancements made for people with learning/intellectual disabilities over the last 20 years. However, many people with learning/intellectual disabilities in Scotland still face significant barriers to realising their human rights.

This has been most clearly illustrated in the inequality experienced by people with learning/intellectual disabilities during the Coronavirus Pandemic. Figures from England demonstrate a 134% increase in the deaths of people with learning disabilities² during this time. This sits

¹ [Scottish Government \(2020\)](#)

² [From the 10th of April to the 15th of May 2020 386 people with learning disability died, as compared to 165 the previous year.](#)

alongside other concerns about the use of 'Do Not Resuscitate Orders'³, the proposed use of the Clinical Frailty Scale and the widescale removal of social care support⁴. This has resulted in people with learning/intellectual disabilities feeling further left behind because of Scotland's emergency response.

These pandemic-related inequalities have added to ongoing concerns about the challenges people with learning/intellectual disabilities face in attempting to realise their fundamental human rights. Whether in education, health, employment or a range of other issues, people with learning/intellectual disabilities experience much poorer life outcomes than other people.

These issues have caused significant concerns for the wider Disabled Peoples' Movement⁵ and were recently highlighted by the Fraser of Allander Institute⁶. The UN Committee on the Rights of Persons with Disabilities also reflected these concerns stating, *"The COVID-19 pandemic has revealed that the Convention on the Rights of Persons with Disabilities (CRPD) has not been comprehensively implemented by States Parties"*.

What is the UNCRPD?

The UNCRPD and its Optional Protocol was adopted in 2006. It developed from work by the United Nations to change attitudes towards disabled people and aims to ensure that disabled people are not viewed as *'objects'* of charity, medical treatment and/or social protection. Instead, the UNCRPD is based on the belief that disabled people, including those with learning/intellectual disabilities are active social citizens, with human rights.

The Convention is intended as a legal source for international human rights law and the protection of human rights. It adopts a broad understanding of disability, which includes learning/intellectual disability. Critically, it highlights areas where disabled people's rights have been violated and where protection of rights must be enforced.

³ [SILC \(17th of April 2020\)](#)

⁴ [SCLD \(2020\)](#)

⁵ [Glasgow Disability Alliance \(2020\)](#)

⁶ [Fraser of Allander Institute \(2020\)](#)

⁷ [United Nations \(2020\)](#)

What is incorporation?

Incorporation is the process used by countries to integrate some or all aspects of international human rights treaties into domestic law. There are three main types of incorporation: direct incorporation, indirect incorporation, or a piecemeal approach to incorporation.

Why do we need the incorporation of the UNCRPD?

Incorporation of the UNCRPD is needed in Scotland to ensure we are respecting, protecting, and fulfilling all human rights in Scotland, equally. Incorporation of the UNCRPD would be a formalisation of Scotland's existing commitment to the principles of the UNCRPD as evidenced in the ratification of the treaty in the UK in 2009 and through existing Scottish Government policies such as; the National Performance Framework, '*The Fairer Scotland for Disabled People Action Plan*⁸ and '*The keys to life*⁹.

However, despite these policies, people with learning/intellectual disabilities tell us that their lived experience does not reflect policy intention. We, therefore, believe that incorporation of the UNCRPD into domestic Scottish law will act as the bridge between policy intent and lived experience, ensuring that systems consistently deliver rights, and prevents the most serious human rights violations. Examples of these types of human rights violations are outlined below:

Health Inequalities

People with learning/intellectual disabilities die on average 20 years earlier than the general population¹⁰. This is supported by recent data from The Scottish Learning Disability Observatory (SLDO)¹¹ which has shown that premature mortality was 12 times higher for children and young people with learning/intellectual disabilities compared to other children and young people. This figure rises to 17 times more likely for girls and young women. The same research showed respiratory-related deaths were 55 times higher in children and young people with

⁸ [Scottish Government \(2016\)](#)

⁹ [Scottish Government \(2019\)](#)

¹⁰ [The keys to life \(2013\)](#)

¹¹ [Scottish Learning Disabilities Observatory \(2020\)](#)

learning/intellectual disabilities. This sits alongside new findings stating that people with Down's Syndrome are 10 times more likely to die because of contracting COVID-19¹².

The restraint and seclusion of children and young people with learning/intellectual disabilities

88%¹³ of the 204 respondents to a survey said their disabled child had experienced physical restraint and 35% said this took place frequently. 71% said their children had experienced seclusion and 21% said it took place regularly. 50% had been medicated to deal with behaviour deemed challenging. 68% of the physical interventions took place in schools.

The Scottish Children and Young People's Commissioner's investigation on restraint and seclusion in Scottish schools also highlighted the absence of clear consistent policies and procedures on restraint and seclusion at local authority level to govern its use¹⁴.

Delayed Discharge and Out of Area Placements

705¹⁵ people with learning/intellectual disabilities are in out of area placements in Scotland from 30 Health and Social Care Partnerships. 62 of these people were classified as '*delayed discharge*' from hospitals. More than 22% had been in the hospital for more than 10 years and another 9% for five to 10 years.

Hate Crime

Between 2014/15 and 2018/19, disability aggravated crime has increased by 64% in Scotland. Despite this, we know there is an under-reporting of learning/intellectual disability hate crime^{16/17} in Scotland. This is potentially exacerbated both by Third Party Reporting Centres' inconsistencies

¹² [Clift et al \(2020\)](#)

¹³ [PABSS & Challenging Behaviour Foundation \(2019\)](#)

¹⁴ [Children and Young Peoples Commissioner \(2018\)](#)

¹⁵ [McDonald \(2018\)](#)

¹⁶ [Foundation for people with learning disabilities \(2018\)](#) data from England

¹⁷ [SCLD \(February 2019\)](#)

in understanding of their role in reporting incidents of hate crime¹⁸ and by a lack of disaggregated data on learning/intellectual disability collected and made available¹⁹.

In Scotland, we are also still to see a separate offence for *'mate'* crime or exploitation committed against people with learning/intellectual disabilities²⁰. Instead, people with learning/intellectual disabilities tell us that when exploitative crimes are committed against them, they are often referred to adult support and protection processes.

Inequality of opportunity

Research has shown that schools cultivate low expectations of children and young people with learning/intellectual disabilities, leading to low levels of educational attainment. In 2013/14, 17% of young people with learning/intellectual disabilities achieved an SCQF level 6 or above, compared to 58% average of all pupils²¹. Updated data from 2016/2017 showed that this gap had widened, with 9% of young people with a learning/intellectual disability achieving an SCQF at level 6 or above as compared to 60% average of all pupils²².

This inequality of educational opportunity is one factor which contributes to low levels of employment of people with learning/intellectual disabilities. Learning Disability Statistics Scotland²³ indicates that only 4.1% of people with learning/intellectual disabilities and autism known to local authorities are in employment.

The issues outlined above demonstrate some of the rights violations people with learning/intellectual disabilities face in Scotland. These issues are multifaceted, intersectional and relate to how society devalues the worth of people with learning/intellectual disabilities.

¹⁸ [SCLD \(2017\)](#)

¹⁹ [SCLD \(2020\)](#)

²⁰ [SCLD \(October 2019\)](#)

²¹ [McTeir et al \(2016\)](#)

²² [Scottish Government \(2019\)](#)

²³ [SCLD \(2019\)](#)

The Way Forward

SCLD believes that for people with learning/intellectual disabilities the implementation of existing human rights and equalities legislation has at times failed them, leaving this population both invisible and ignored.

Given our knowledge on the various human rights infringements faced by people with learning/intellectual disabilities and a concerning lack of data on the limits imposed on them to fulfill their human rights, we believe that direct incorporation of the UNCRPD into domestic Scottish law is critical.

We believe direct incorporation is critical for the Scottish Government to comply with General Obligations (Article 4)²⁴ of the UNCRPD. As a result: Scottish legislation will be UNCRPD compliant, there will be a proactive duty on public authorities to comply with the UNCRPD, a reactive duty that where public authorities fail to comply there will be an accessible complaints process and commitments on duty bearers to consider wider UN committee documents in all decision making. We believe this will help us in achieving a ‘gold standard’ of implementation of human rights in Scotland.

To ensure people with learning/intellectual disabilities can realise their human rights, SCLD is asking people with learning/intellectual disabilities, the organisations that assist and support them, and other partners to join with us in working towards the direct incorporation of the UNCRPD. This will ensure transformational change is created with and for people with learning/intellectual disabilities. This will involve working together to:

1. Promote awareness of the rights and duties contained in the UNCRPD and how it will make Scotland fairer
2. Generate support and awareness about the incorporation of the UNCRPD
3. Evidence the need for the incorporation of the UNCRPD
4. Support the Scottish Government to give effect to its commitment to UNCRPD incorporation

²⁴ [Article 4, UNCRPD \(2006\)](#)

5. Support people with learning/intellectual disabilities to act as human rights defenders who can actively participate in the process of incorporation and its implementation.



Signatories

The following people and organisations have agreed to join with the Scottish Commission for People with Learning Disabilities to work collaboratively to ensure the direct incorporation of the UNCRPD in Scotland:



Rosemary Hampson
Parent of a person with a Learning
Disability



Alan Hampson
Parent of a person with a Learning
Disability



Kate Sainsbury
Parent of a person with a Learning
Disability



Michael McEwan
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Alan Guild
Parent of a person with a Learning
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Patricia Graham
Parent of a person with a Learning
Disability and Chair of PAMIS



Claire Edwards
Parent and Disability Advocate



Shelley Carter
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Disability



Alex Davidson
Independent Chair Adult Protection



Alexander Stark



Leeanne Clark



John Gallon



Susan Leavy



Christine Bruce – *The Keys to life*
Expert Group Member



Sandy Cruickshank – *The Keys to life*
Expert Group Member



Samina Rehman – Equal Say Parent
Rights Group Member



Demi Nolan – Equal Say Parents
Rights Group Member



Kat Bathrope – Equal Say Parents
Rights Group Member



Carolyn Martin – Equal Say Parents
Rights Group Member



Susan Quin – Equal Say Parents Rights
Group Member



Joe Horrocks – Senior Social Worker
Practitioner/MHO, Orkney Health and
Care



Cathie, Martin and Andrew Laycock
Family of person with a learning
disability



Linda, Derek and Fern Brodie
Our Future In Our Hands



Linda Campbell, Mike and Magnus
Turpie

Our Future In Our Hands



Lindsey, Francis and Daniel Cummings

Our Future In Our Hands



Claire Edwards, Graham and Joe
Pomphrey

Our Future In Our Hands



Rosemary, Alan and Grace Hampson

Our Future In Our Hands



Angeli Mehta, Sandy and Caitlin Batho
Our Future In Our Hands



Alison, Shahzad and Iman Naeem
Our Future In Our Hands





The British Institute of Human Rights



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Restraint Reduction Network

R N I B

Scotland

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SPECIAL NEEDS ACTION PROJECT



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supporting life's journey...

**Streets
Ahead** | 



Campaign for
Freedom of
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in Scotland





The Scottish Commission for People with Learning Disabilities
2020

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