



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 is being 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'.

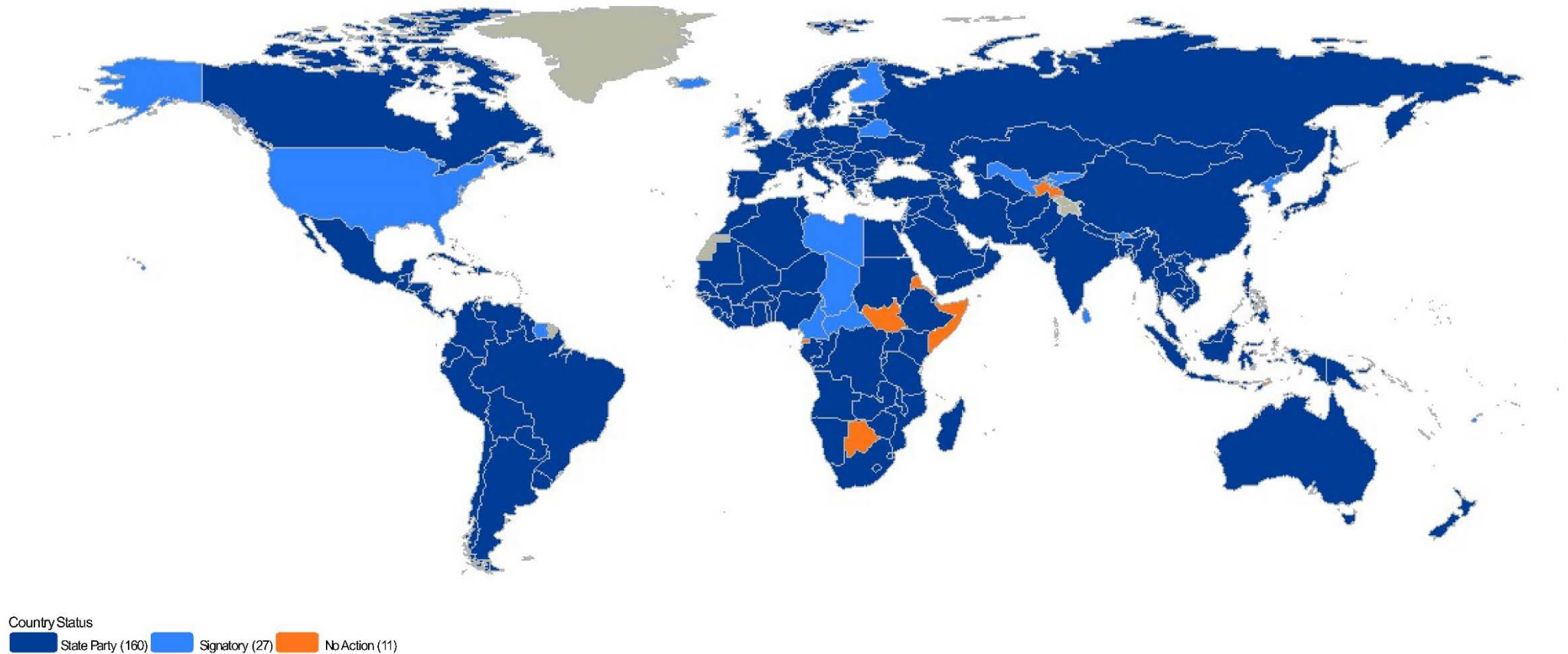
Investigations by the Committee are confidential, and the process, extent and scope of this inquiry are unknown. However, it is believed the inquiry will consider policies introduced by the Coalition Government since 2010 in relation to welfare and social security benefits, and in particular their compatibility with Articles 19 and 28: the rights of persons with disabilities to live independently and to enjoy an adequate standard of living.

The UK is the first country to be investigated by the UN in relation to this Convention.

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 what we know about the UN inquiry. It then outlines a selection of policies introduced under the Coalition Government which have had an impact on people with a disability covering housing, education, welfare, justice, healthcare and employment.

The UN Committee report, along with the UK Government's response, is not expected to be published until 2017.

Map of Countries which are States Parties to the Convention on the Rights of Persons with Disabilities



Status of the convention as at 25 November 2015.

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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](#).¹

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 2006.²

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.³

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.’⁴

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.

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

² General Assembly resolution A/RES/61/106.

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

⁴ 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 2009.⁵

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.

⁵ 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

That the UN Committee on the Rights of Persons with Disabilities was investigating the UK Government was revealed in the press towards the end of August 2015.⁶

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.⁷

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.⁸

The UN inquiry was also raised in Prime Minister's Questions by Jeremy Corbyn, who asked:

The final question I want to put to the Prime Minister comes from Louis. This is deeply embarrassing to all of us in this House and, indeed, to this country as a whole. He writes:

"The United Kingdom is currently being investigated by the UN Committee on the Rights of Persons with Disabilities because of allegations of 'grave and systematic' violations of disabled people's human rights."

This is very sad news indeed, but it is even sadder that we need to be investigated because of violations that have occurred. Will the Prime Minister commit to co-operate fully with the inquiry and publish in full the Government's response to it, so that we can ensure that people with disabilities are treated properly and legally and given full respect by and opportunities in our society?⁹

The Prime Minister, who was later criticised in the press for dismissing the importance of this inquiry, replied:

...On the issue of helping disabled people in our country, tens of thousands more disabled people have got into work under this Government. Because of legislation passed by a previous Conservative Government, we have some of the strongest equality legislation anywhere in the world when it comes to

⁶ *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.

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

⁸ PQ 9424 [on Social Security Benefits: Disability] asked on 8 September 2015.

⁹ Questions to the Prime Minister, [HC Deb 21 October 2015 c950](#).

disability. Of course I will look at any United Nations investigation, but sometimes when you look at these investigations you find that they are not necessarily all they are originally cracked up to be. There are many disabled people in our world who do not have any of the rights or any of the support that they get here in Britain, and I think we should be proud of what we do as we co-operate with this report.¹⁰

The inquiry is being conducted under Article 6 of the Optional Protocol which allows a State Party to be investigated should the Committee have received, 'reliable information indicating grave or systematic violations,' of the rights affirmed by the Convention. As part of the investigation, the State Party concerned is invited to cooperate with the inquiry and, following the inquiry's conclusion, submit a response to the Committee's findings. The proceedings and scope of any inquiry conducted under Article 6 are confidential.

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

2.1 Extent of the Inquiry

Any inquiry conducted under Article 6 is confidential and conducted in private, with those submitting testimony asked to sign a confidentiality agreement. Because of this the extent and scope of the UN inquiry is not known. However, it is believed that the inquiry will largely focus on welfare and the policies introduced by the Coalition Government since 2010, specifically: changes to Employment and Support Allowance, scrapping of the Independent Living Fund, cuts to the Access to Work scheme, the under-occupancy deduction from Housing Benefit or 'bedroom tax' and the Benefit Cap.¹¹

2.2 Publication of the Report

It is thought that the evidence sessions for the inquiry took place in the UK in October 2015.¹² Once the UN Committee has considered the evidence, the Committee's findings will be put to the UK Government who will have the opportunity to respond. *The Guardian* have reported that the UN report and the UK Government's response will not be published until 2017.¹³

There is no legal obligation for the UK Government to act upon the findings of the final UN report.

¹⁰ HC Deb 21 October 2015 c950. For criticism of the PM see, for example, *The Independent*, '[David Cameron dismisses UN inquiry into DWP's treatment of disabled people](#)', 21 October 2015.

¹¹ *Ibid.* See also DPAC blog, '[So DPAC triggered the UNCRPD inquiry but what does it really mean?](#)', 8 September 2015.

¹² *Disability News Service*, '[UN Investigators begin taking evidence in UK on "rights violations"](#)', 16 October 2015.

¹³ *Guardian*, '[UN inquiry considers alleged UK disability rights violations](#)', 20 October 2015.

3. UK Government Policies

The exact nature and extent of the UN investigation is unknown as the process is confidential, however it is known that inquiry will be considering the effects of UK government policy since 2010 on persons with disabilities in relation to their rights under the Convention.

What follows is a selection of policies, chosen by Library specialists, introduced under the Coalition Government which have had an impact on people with a disability. This selection is not comprehensive and inclusion is not necessarily an indication that the policy is of concern to the inquiry.

3.1 Housing and Housing Benefit

Articles 9 and 28: Accessibility and Adequate standard of living and social protection

Article 9 of the Convention requires States Parties to take appropriate measures to ensure persons with disabilities have access, on an equal basis with others, to the physical environment, transportation, technologies and other services provided to the public. This requirement includes the provision of housing.

Article 28 states that States Parties recognise the right of persons with disabilities to an adequate standard of living, particularly including the adequate provision of food, clothing and housing. States Parties are required to ensure social protection for persons with disabilities and their families, including access to public housing programmes and assistance for disability-related needs.

Accessible Housing

Existing housing

There is general agreement that there is an insufficient level of accessible housing in the United Kingdom.¹⁴ In 2011 the Office for Disability Issues found that 9% of adults who have a disability, as defined under the *Equality Act 2010*, experience difficulty getting into any room within their own home, and 8% of adults with an impairment reported difficulty getting in or out of their own home.¹⁵

According to the English Housing Survey, in 2013 only 6% of homes in England had the four key features of accessibility – level access, a flush threshold, sufficiently wide doors, and a WC at entrance level. A quarter of all homes in England (5.8 million dwellings) had none of these accessibility features.¹⁶

Disabled Facilities Grants

Local authorities in England, Wales and Northern Ireland provide Disabled Facilities Grants (DFGs) to fund home adaptations for people who are elderly or have a disability in order to facilitate access into and around the home. It is estimated that DFGs help over 44,000 disabled people every year, including a high proportion of older people.¹⁷

¹⁴ EHRC, *Monitoring the Implementation of the UN Convention on the Rights of Persons with Disabilities*, 2014, p12.

¹⁵ ODI, *Life Opportunities Survey, Wave 1 Results 2009/11*, 2011, pp128-32.

¹⁶ DCLG, *English Housing Survey: Profile of English Housing 2013*, 2015, pp53-4. Seventy five per cent of homes had at least one of these accessibility features.

¹⁷ Age UK, *Housing in Later Life*, 2014, p10.

DFGs are means tested on the basis of household income and capital. In England grants can be made up to £30,000, £36,000 in Wales and £25,000 in Northern Ireland. They are not available in Scotland.¹⁸

As part of the Government's incorporation of DFGs into the Better Care Fund, £220m funding has been secured for DFGs in 2015/16.¹⁹ However, concerns have been raised that the incorporation of DFGs into the Better Care Fund may lead to funds only being available to those in higher need categories rather than being used to prevent problems from arising for those with lower levels of need.²⁰

The current pressure on DFGs is illustrated in a report by the charity Leonard Cheshire Disability which found that:

- In 2014, 62% of councils failed to fund agreed adaptations within the one year deadline.
- 44% of councils had people waiting over two years for a grant with 8 reporting waits of over four years.
- Over 2,500 disabled people each year wait over 12 months for adaptations to make their homes accessible.
- Applications for DFGs have risen by 6% since 2011/12, but the number of adaptations funded has only risen by 3% over the same period.²¹

In the Autumn Statement 2015, the Government committed to provide £500m for DFGs by 2019/20, covering 85,000 home adaptations and preventing 8,500 people from needing to go into a care home.²²

Adaptations in communal areas

Long leaseholders in blocks of flats who seek permission to carry out disabled adaptations in communal areas can often face resistance from the freeholder and other long leaseholders. Measures introduced in the *Equality Act 2010* sought to address this issue: section 36 and schedule 4 would enable tenants or occupiers with a disability to request disability related alterations to physical features in common areas.

The legislation sets out the process which must be followed by the person responsible for the common parts (whether a landlord or association). This process includes consultation with others affected (i.e. other residents) which must be carried out within a reasonable time of the request being made. If an adjustment is made, a written agreement must be entered into between the responsible person and the person requesting the adjustment setting out their rights and responsibilities.

Schedule 4 would also make it unlawful for a responsible person to victimise a disabled tenant because of costs incurred in making any reasonable adjustment. If an adjustment involved the common parts, a landlord would be able to charge the tenant for any cost.

The relevant provisions within the Act have not yet been brought into force. The Coalition Government decided to review the *Equality Act* as

¹⁸ GOV.UK, [Disabled Facilities Grants - what you'll get](#), [accessed 30 December 2015].

¹⁹ House of Commons Library, [Disabled Facilities Grants \(DFGs\)](#), 3011.

²⁰ Age UK, [Housing in Later Life](#), 2014, p10.

²¹ Leonard Cheshire Disability, [The Long Wait for a Home](#), 2015, p2.

²² HM Treasury, [Spending Review and Autumn Statement 2015](#), para. 1.109.

part of its [Red Tape Challenge](#); it is not clear if or when this part of the Act will be brought into force.

New housing supply

Under the [National Planning Policy Framework](#), local authorities should plan to create safe, accessible environments and promote inclusion and community cohesion. This includes buildings and their surrounding spaces. Local planning authorities should take account of evidence that demonstrates a clear need for housing people with specific housing needs and seek to meet that demand.

Once a housing needs assessment has been carried out, local planning authorities should set out how they intend to tackle the need for accessible housing development in relation to Requirements M4(2) (accessible and adaptable dwellings) and M4(3) (wheelchair user dwellings) of the Building Regulations. Local planning authorities should consider a wide range of factors, including:

- The likely future need for housing for older and disabled people.
- The size, location, type and quality of dwellings needed to meet specifically evidenced needs (for example care homes).
- The accessibility and adaptability of existing housing stock.
- How needs vary across different housing tenures.
- The overall impact on viability.²³

A campaign to promote building homes to a [Lifetime Homes Standard](#) was initiated in the early 1990s by a group of housing experts, including Habinteg and the Joseph Rowntree Foundation. They set out 16 design criteria that could be universally applied to new homes at minimal cost. The aim was to ensure that new homes would be inclusive, accessible, adaptable, sustainable and good value.

In November 2015 Habinteg published a briefing to help with the transition to the new national housing standards:

Technical standards have been introduced in England from 1 October 2015. This briefing, aimed at local authority planners, developers, architects and access professionals, compares the technical specification provided in the new 2015 Building Regulations M(4) Category 2, 'accessible, adaptable dwellings' with the 16 design criteria set out in its predecessor, the Lifetime Homes Standard.

The legacy of the Lifetime Homes Standard will now be broadly taken forward through Building Regulations in the form of the M(4) Category 2 standard, as shown in this briefing. Habinteg have also contributed their expertise to the transition of these optional access standards with a briefing - [7 points about the new Housing Standards 2015](#) - published as the standards came into force in October.²⁴

Announcing the briefing, Chief Executive Paul Gamble said:

We welcome the new standards being brought into Building Regulations for the first time. However, as long as these standards

²³ NPPF, [Accessibility and wheelchair housing standards](#), 2015.

²⁴ *Lifetime Homes*, [Habinteg release Accessible Housing Standards 2015 briefing](#), 12 November 2015.

are optional, the inclusive principles behind Lifetime Homes and the campaign for increasing the supply of accessible homes goes on.²⁵

Funding for new and specialist housing

The Homes and Communities Agency (HCA) invested £1bn in supported housing and housing for older people through the National Affordable Housing Programme 2008-2011. This delivered 18,500 new homes. It was anticipated that 9.5% of the homes developed under the Affordable Homes Programme 2011-2015 would be affordable rent homes (up to 80% of market rents) specifically targeted at meeting the housing needs of vulnerable people. The HCA encourages proposals from developers seeking funding for specialist housing development, including proposals for rented or low cost housing which meets the needs of vulnerable or older people.²⁶

The Department of Health has also created a Care and Support Specialist Housing Fund:

Housing plays a critical role in helping older people and disabled adults to live as independently as possible, and in helping carers and the wider health and social care system offer support more effectively. However, evidence suggests that there are currently not enough specialised housing options available for these groups, especially for those who wish to own their own home.

Over five years from 2013/14, the Department of Health is making available £160m capital funding for specialist housing providers to bring forward proposals for development of specialist housing to meet the needs of older people and adults with disabilities outside of London. This funding may be supplemented by up to a further £80m capital funding in the first two years of the programme. The programme will be delivered and managed by the Homes and Communities Agency.

There is also £40m (up to £60m) capital funding available for developments in London, to be delivered by the Greater London Authority.²⁷

In the Autumn Statement 2015, the Government committed to deliver 400,000 affordable home starts by 2020-21, with a focus on low cost home ownership to include, 'at least 8,000 specialist homes for older people and people with disabilities.'²⁸

²⁵ *Ibid.*

²⁶ HCA, [Vulnerable and Older People](#), [accessed 30 December 2015].

²⁷ HCA, [Care and Support Specialist Housing Fund](#), [accessed 29 November 2015].

²⁸ HM Treasury, [Spending Review and Autumn Statement 2015](#), para. 1.146.

Under-occupancy deduction from Housing Benefit

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.²⁹

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 calculation of eligibility to 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.

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*.³⁰

The Department for Work and Pensions (DWP) have not published any information on the number of disabled people subject to the deduction, but the latest data suggests that at least 47% of Housing Benefit claimants affected by the under-occupancy charge have a disability.³¹

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.

²⁹ 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.

³⁰ DWP, [Housing Benefit: Size Criteria for People Renting in the Social Rented Sector – Equality Impact Assessment](#), 2012, sections 42-7.

³¹ House of Commons Library calculations based on data provided by [DWP Stat-Xplore](#). In August 2015, of the 449,159 claimants subject to the deduction in their Housing Benefit, 211,624 were in receipt of income-related Employment and Support Allowance.

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.³²

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 25th 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 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.³³

The Government described her findings as 'partisan' and 'misleading'.³⁴

More recently, 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.³⁵

³² Human Rights Joint Committee, *Legislative Scrutiny: Welfare Reform Bill*, 21st report of Session 2010-12, paras 1.64-6.

³³ 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.

³⁴ *Inside Housing*, 'UN housing expert's report calling to end bedroom tax slammed', 4 February 2014.

³⁵ DWP, [Evaluation of Removal of the Spare Room Subsidy: final report](#), 2015, p72.

Legal Challenges

There have been a number of legal challenges in relation to the under-occupancy deduction from Housing Benefit. Some of the key cases relating to disability issues are outlined below.

Disabled adults sharing a bedroom

Over the course of three days in May 2013, the High Court heard ten cases challenging the deduction which included cases where disabled adults argued they were unable to share a bedroom. The *Guardian* reported:

The cases lodged by disabled adults include one relating to Charlotte Carmichael and her husband Jayson. She sleeps on a hospital mattress to ease bed sores caused by her spina bifida, while he uses a single bed in their smaller second room. But from April the new regulations would mean that they are under-occupying their specially adapted flat in Southport, Merseyside.³⁶

The Equality and Human Rights Commission intervened in these cases as an independent expert third party to advise the court on issues of discrimination law and human rights. They also advised on the UK's obligations under the Convention.

The court ruled that the under-occupation deduction was lawful, and this ruling was later upheld by the Court of Appeal.³⁷ Permission has been granted for appeal to the Supreme Court.³⁸

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 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.³⁹

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.'⁴⁰ Likewise, several tribunal cases heard in Scotland have agreed that disability related equipment did not have to be stored in a spare bedroom.⁴¹

³⁶ *Guardian*, '[Children's rights cited in legal challenge launched against the "bedroom tax"](#)', 5 March 2013.

³⁷ *MA & Ors v Secretary of State*, [2013] EWHC 2213 QB; [2014] EWCA Civ 13.

³⁸ *Guardian*, '[Disabled tenants to challenge bedroom tax in supreme court](#)', 10 January 2015.

³⁹ *Guardian*, '[Bedroom tax defeat for Westminster council in landmark case](#)', 26 September 2013.

⁴⁰ First-Tier Tribunal Decision Notice SC227/13/03378.

⁴¹ First-Tier Tribunal Decision Notices [SC108/13/01445](#) and [SC108/13/01362](#).

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*.⁴²

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).⁴³ 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.⁴⁴ 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.'⁴⁵ The Government accepted that there may be rare circumstances where disabled children may not qualify for the relevant DLA award but could 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.⁴⁶

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.⁴⁷

⁴² *Nearly Legal*, '[Bedroom Tax: Upper Tribunal on Article 14](#)', 6 October 2015.

⁴³ 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](#).

⁴⁴ SSAC and DWP, [Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2013](#), 2013.

⁴⁵ *Ibid.* Government response, pp8-9.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.* p9.

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 August 2015), 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 in 2015/16. 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.⁴⁸

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 decision rests with the authority.⁴⁹ 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.⁵⁰

Despite this, the research found that a 'large majority of local authorities reported that they always carried out a means test, and most

⁴⁸ [First Delegated Legislation Committee](#) 16 October 2012 c7.

⁴⁹ DWP, *Discretionary Housing Payments guidance manual*, April 2014, para 3.9.

⁵⁰ DWP, [Removal of the Spare Room Subsidy: Interim Evaluation Report](#), July 2014, p15.

of these included [Disability Living Allowance] where they deemed it appropriate to do so.⁵¹

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.⁵² 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*.⁵³

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.⁵⁴ 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.⁵⁵

The Government has suggested they want to give confidence to authorities to make long-term awards where appropriate.⁵⁶ 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.⁵⁷ 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.⁵⁸

Concerns over the impact of cuts to Housing Benefit on people with disabilities and the variable response to DHP applications have been

⁵¹ *Ibid.*, p42.

⁵² Work and Pensions Committee, [Support for Housing Costs in the Reformed Welfare System](#), 4th report of Session 2013-14, HC720, para. 141.

⁵³ [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.

⁵⁴ Work and Pensions Committee, [Support for Housing Costs in the Reformed Welfare System](#), 4th report of Session 2013-14, HC720, para. 142.

⁵⁵ *Ibid.*

⁵⁶ HB Circular S1/2014.

⁵⁷ Work and Pensions Committee, [Support for Housing Costs in the Reformed Welfare System](#), 4th report of Session 2013-14, HC720, para. 145.

⁵⁸ DWP, *Discretionary Housing Payments guidance manual, August 2015*, 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].

raised in several research studies. In a recent report, 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.⁵⁹

Likewise the London Assembly Housing Committee have 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.⁶⁰

3.2 Education

Article 24: Education

Article 24 of the Convention affirms the right of persons with disabilities to education. Specifically it requires States Parties to ensure an inclusive educational system at all levels, without discrimination and on the basis of equal opportunity.

States Parties must provide free primary education and secondary education for persons with disabilities on an equal basis with others, making reasonable accommodation for an individual's requirements.

States Parties must also ensure that persons with disabilities are able to access general tertiary education, adult education, vocational education and lifelong learning on an equal basis with others.

On signing the Convention, the United Kingdom made the following interpretive declaration and reservation in relation to article 24:

The United Kingdom Government is committed to continuing to develop an inclusive system where parents of disabled children have increasing access to mainstream schools and staff, which have the capacity to meet the needs of disabled children. The General Education System in the United Kingdom includes mainstream, and special schools, which the UK Government understands is allowed under the Convention.⁶¹

The UK reserved the right for disabled children to be educated outwith their local community if there was more appropriate provision of education elsewhere, i.e. special schools.

Schools

All schools in England, Wales and Scotland have obligations under the [Equality Act 2010](#), to ensure pupils or prospective pupils, and in some cases former pupils, are not discriminated against on grounds of disability.

Equality law in Northern Ireland is devolved: the [Disability Discrimination Act 1995](#) makes discrimination against disabled pupils unlawful.

England

With the introduction of the [Children and Families Act 2014](#), the system for identifying children and young people in England with special educational needs or disabilities has undergone significant reform.

⁵⁹ Joseph Rowntree Foundation, [Housing Benefit Size Criteria: impacts for social sector tenants and options for reform](#), 2014.

⁶⁰ London Assembly Housing Committee, [Assessing the Consequences of Welfare Reform](#), 2014, para 2.45.

⁶¹ UN Treaty Collection, [Convention on the Rights of Persons with Disabilities](#), declarations and reservations made by the United Kingdom.

Some of the key reforms have been:

- The introduction of a new system of support for children and young people with special educational needs and disabilities (SEND) which covers birth to 25.
- Transitional arrangements in place to move those on the old system to the new one by April 2018.
- Children and young people with SEND will now be covered by Education, Health and Care Plans (EHC) which aim to provide more unified support taking into account learning, healthcare and social care needs.
- Young people and parents of children who have an EHC plan now have the right to request a Personal Budget. This is an amount of money identified by the local authority to deliver provision set out in the EHC plan where the parent or young person is involved in securing that provision; it may include elements of education, health and social care funding to use in support of their needs.
- By September 2014, local authorities were required to have published a 'Local Offer' which sets out the services available for children with SEND. This was to be developed in partnership with children and young people with SEND and their parents, and is subject to ongoing consultation and improvement.
- The [SEND Code of Practice](#) states that as the legal test of when a child requires an EHC plan is the same as for the previous support system, nobody should lose support as a result of these changes.

Reactions to the new system have been mixed, with the Equality and Human Rights Commission noting that disability organisations have raised concerns over the implementation of these changes.⁶²

A report published by the Driver Youth Trust in October 2015, [Joining the Dots](#), analysed the impact of these reforms one year on. Whilst the report praised the many examples of high-quality provision that have arisen in response to the reforms, it was felt that provision was fragmented and, 'as a result, many children and young people do not receive the support they deserve... Ultimately students, parents, schools and sector organisations are finding it difficult to navigate the new system and this is standing in the way of the reforms success.'⁶³

Meanwhile, research by Bath Spa University suggests that the number of children on schools' special educational needs and disabilities registers had fallen as a result of the Government's reforms.⁶⁴

More information is available in the House of Commons Library Briefing, [Special Educational Needs: Support in England](#), 7020.

⁶² EHRC, [Monitoring the Implementation of the UN Convention on the Rights of Persons with Disabilities](#), 2014, p24.

⁶³ Driver Youth Trust, [Joining the Dots: Have recent reforms worked for those with SEND?](#), 2015, p3.

⁶⁴ Henshaw, P., 'Concern for pupils who have lost their SEN recognition', *SecEd news*, 23 September 2015.

Wales

Legislation in relation to special educational needs is contained within [Part IV of the Education Act 1996](#) which was the basis for the pre-reformation structure in England. The [Special Educational Needs Code of Practice for Wales](#) provides further information on the application of this and other legislation to education in Wales.⁶⁵

A [consultation](#) is currently underway in relation to the draft *Additional Learning Needs and Education Tribunal (Wales) Bill*. The draft Bill sets out proposals for a new system for supporting children and young people aged 0-25 with 'additional learning needs'. With the introduction of Individual Development Plans, services will work together in order to provide co-ordinated support. The consultation is open until 18 December with the legislation to be introduced in May.

Scotland

The [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#) sets out the legal framework for the provision of additional support for learning.⁶⁶ According to the [Scottish Government](#), the Act places duties on education authorities and other agencies to make provision for any children and young people who need additional support to benefit from education. This support may be needed for any reason, and over a short or long term period determined by the needs of the individual.⁶⁷

Further information on the availability of additional support for learning and the provision for particular needs, including disability, is available from [Education Scotland](#).

Northern Ireland

Children in Northern Ireland with learning difficulties or disabilities are supported by the provisions contained in the [Education \(Northern Ireland\) Order 1996](#).

According to the [Department for Education Northern Ireland](#), the following are examples of areas in which support may be provided:

- schoolwork
- reading, writing, number work or understanding information
- children expressing themselves or understanding others
- making friends or relating to adults
- behaving properly in school
- organisation
- assistance with sensory or physical needs in school

If schools cannot provide sufficient support for a child's needs alone, a formal assessment of their needs can be made. Further information on this assessment process is available from the [Department for Education](#).

⁶⁵ Welsh Government, [Special Educational Needs Code of Practice for Wales](#), 2004.

⁶⁶ As amended by the [Education \(Additional Support for Learning\) \(Scotland\) Act 2009](#).

⁶⁷ More information is available from The Scottish Government, [Supporting Children's Learning: Code of Practice \(Revised Edition\)](#), 2010.

3.3 Welfare and Social Security

Article 28: Adequate standard of living and social protection

This article affirms the rights of persons with disabilities to an adequate standard of living for themselves and their family, and to social protection without discrimination on the basis of disability. This right includes access to assistance from the state with disability-related expenses for persons with disabilities and their families.

The benefits and tax credits systems provide support for disabled people and their families in various ways:⁶⁸

- In 2015/16, just over 2.5 million adults in Great Britain receive incapacity benefits (principally Employment and Support Allowance) totalling £14.7 billion.
- Extra-costs disability benefits (Disability Living allowance, Personal Independence Payment and Attendance Allowance) are received by 5.0 million people, at a total cost of £21.1 billion.
- 733,000 people receive Carer's Allowance for caring full-time for a person receiving a qualifying disability benefit, at a total cost of £2.5 billion.
- Further support is provided via the disability and carer premiums payable with means-tested benefits such as Housing Benefit.
- Other schemes include the Industrial Injuries Scheme (paying benefits totalling £905 million to 313,000 claimants); and the Armed Forces Compensation Scheme which, alongside its predecessor the War Pensions Scheme, provides support for disabled veterans.
- In the tax credits system, additional help for disabled children is provided by the Child Tax Credit disabled child elements, and for disabled adults, the disabled worker element in Working Tax Credit.

Families with disabled people are more likely to be in receipt of state benefits compared with families with no disabled people. In 2013/14, 83% of families in the UK with at least one disabled adult and no disabled children were in receipt of state support, and 38% claimed an income-related benefit.⁶⁹ 95% of families with a disabled child (and no disabled adult) received state support, and 37% received an income-related benefit. For families with no disabled adult or disabled child, the percentages were 46% and 12% respectively.⁷⁰

The 2010 Government embarked on a major programme of welfare reforms, some of which will not be implemented fully for a number of years.⁷¹ Major elements include the introduction of Universal Credit, which is replacing means-tested benefits and tax credits for working age

⁶⁸ All figures from the DWP, [Benefit Expenditure and Caseload Tables](#), 2015.

⁶⁹ Disability defined as in the *Equality Act 2010*. A person is considered to have a disability if they have a long-standing illness, disability or impairment which causes substantial difficulty with day-to-day activities.

⁷⁰ DWP, [Family Resources Survey 2013/14](#), Table 4e.

⁷¹ The National Association of Welfare Rights Advisers (NAWRA) has compiled a [Welfare Reform Changes Chart](#) (October 2014) which covers policy measures introduced since 2011 and future changes planned up to 2018. The chart includes details of each change and provides analysis and an assessment of the likely impact.

families, and Personal Independence Payment, which is replacing Disability Living Allowance, again for people of working age.

There have also been significant changes to incapacity benefits, including the continued rollout of Employment and Support Allowance (ESA), and changes to the structure of ESA and “conditionality” for ESA claimants. Other measures not exclusively affecting people with disabilities but which may impact on families with disabled people, include changes to benefits uprating policy and capping of the total amount of benefits the household can receive.

The current Government has announced further welfare measures which will affect disabled people including a four year freeze for most working-age benefits, reductions in the Benefit Cap, changes to tax credits and to Universal Credit, and abolishing the “Work-Related Activity Component” for new ESA claims from 2017.

Employment and Support Allowance

Employment and Support Allowance (ESA) is an income replacement benefit for people with a health condition or disability which means that 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.⁷²

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.⁷³ In March 2014, the DWP announced the early exit of Atos from the DWP contract. A new Medical Services contractor,

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

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

Maximus, took over on 1 March 2015 and has pledged to undertake one million WCAs by the end of 2015, to help clear the backlog.

The main issues and concerns raised in relation to ESA are:

- The Work Capability Assessment
- Time-limiting of contributory ESA for some claimants
- The abolition of the ESA Work-Related Activity Component (measures in the current *Welfare Reform and Work Bill*)
- ESA “conditionality” and sanctions

Each are considered in turn below.

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 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.⁷⁴

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 Lichfield). 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.
- 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.⁷⁵
- 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

⁷⁴ Further information is available from the Commons Library briefing, [The Work Capability Assessment for Employment and Support Allowance](#), 5850.

⁷⁵ To date, 36% of all fit for work decisions have been appealed against. 54% of initial fit for work decisions made in relation to claims starting between July – September 2014 have been overturned (DWP, [ESA: outcomes of Work Capability Assessments – claims made to Mar 2015 and appeals to Sept 2015](#), 10 December 2015).

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 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.
- In addition, the WCA failed to provide an accurate assessment of a claimant's individual health-related employment barriers, or their distance from the labour market.⁷⁶

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 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, the previous 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.⁷⁷

However, in a speech given on 24 August 2015, the Secretary of State for Social Security, 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.'⁷⁸ As yet, the Government has not put forward any specific proposals.

Time-limiting contributory ESA in the WRAG

As a result of measures in the [Welfare Reform Act 2012](#), since April 2012 receipt of contributory ESA for claimants in the Work-Related Activity Group has been limited to 12 months. All recipients of contributory ESA in the WRAG, including incapacity benefit claimants moved to ESA on reassessment, are affected by the time limit. Savings of almost £1.8 billion a year are expected by 2019-20.⁷⁹

The previous Government argued that ESA for people in the WRAG was never intended to be a long-term benefit and that the change brought

⁷⁶ Work and Pensions Committee, [1st Report of Session 2014-15](#), HC 302.

⁷⁷ [Government Response to the House of Commons Work and Pensions Select Committee's Report on Employment and Support Allowance and Work Capability Assessment, First Report of Session 2014-15](#), Cm 8967, November 2014.

⁷⁸ Iain Duncan Smith, [A Speech on Work, Health and Disability](#), 24 August 2015.

⁷⁹ OBR, [Policy Measures Database](#), 7 April 2015.

ESA closer into line with contribution-based Jobseeker's Allowance, which is payable for six months only. It also pointed out that means-tested support would still be available for those affected. Of the 700,000 ESA claimants who would be affected by the time limit, around 60% were expected to have some entitlement to income-related ESA, but around 280,000 would lose ESA completely because, for example, they have other income or savings, or partner in work.

The time limit is highly controversial. Welfare rights and disability organisations have argued that it undermines the contributory principle and will increase poverty and financial distress for people with long-term conditions. During consideration of the *Welfare Reform Bill 2010-12*, the Opposition did not reject time-limiting on principle but argued that the choice of twelve months was arbitrary. Government defeats in the Lords on time-limiting were overturned by the Commons, although some concessions were announced regarding people with cancer.

More information is available from the Library briefing, [Time limiting of contributory Employment and Support Allowance from 30 April 2012](#).

Abolition of the Work Related Activity Component

The [Welfare Reform and Work Bill 2015-16](#) includes provisions which would abolish the Work Related Activity Component – the £29.05 a week addition payable to ESA claimants in the Work-Related Activity Group – for new ESA claims from April 2017. It also abolishes the corresponding Limited Capability for Work element in Universal Credit, with expected savings of £640 million per year by 2020-21.

Further details may be found in the Commons Library Briefing paper, [Welfare Reform and Work Bill \[Bill 51 of 2015-16\]](#), section 7.

The Government states that this measure will, alongside additional funding for programmes to help people with disabilities return to and remain in work, 'ensure the right incentives and support are in place for those closer to the labour market to help them make this transition when they are ready.'⁸⁰

Others however, are concerned about the impact on disabled people and their families, and question the assumption that it will help disabled people return to work.

On 8 December 2015 a report on the proposed ESA changes recommended that the Government should not proceed with the removal of the Work-Related Activity Component.⁸¹ The review received submissions from over 30 organisations and almost 200 disabled people, and considered evidence from two roundtable sessions, relevant legislation and publications and a survey of claimants by the Disability Benefits Consortium. Key findings include:

⁸⁰ HM Treasury, [Summer Budget 2015](#), HC 264 2015-16, para 41.

⁸¹ Lord Low of Dalston, Baroness Meacher and Baroness Grey-Thompson, [Halving the Gap? A Review into the Government's proposed reduction to Employment and Support Allowance and its impact on halving the disability employment gap](#), 2015. Note this is not an official report by a Parliamentary committee, but the report of a review carried out by three members of the House of Lords and supported by several charities.

- Removal of the WRAC would have a detrimental effect on claimants' finances, social inclusion and health.
- It could also have a severe knock-on effect on other public services, including the NHS, social services, raising the question as to whether the expected savings would actually be achieved.
- There was no relevant research setting out a convincing case that the WRAC acts as a financial disincentive to work.
- There is concern that ESA claimants could be incentivised to go into work when many are too ill to work.
- Removal of the component could move people further away from the labour market rather than nearer.

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 December 2012 (when the current sanctions regime was introduced) and June 2015, over 70,000 sanctions were imposed on ESA claimants.⁸² 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.⁸³ 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.

In the [Government's response](#), published on 22 October 2015, they accepted in principle the Committee's recommendation of a review of ESA sanctioning in relation to the Work Programme.⁸⁴ The Secretary of

⁸² Data from [DWP Stat-Xplore](#) – all adverse sanction decisions made.

⁸³ Work and Pensions Committee, [Benefit sanctions policy beyond the Oakley Review](#), 5th Report of Session 2014-15, HC 814, 24 March 2015.

⁸⁴ [HC 557, 2015-16](#).

State has promised to write to the Committee setting out further details of proposals to enhance effective support for ESA claimants.⁸⁵

Disability Benefits

Disability Living Allowance (DLA) is a non-means-tested, non-taxable benefit introduced in 1992 to help with the extra costs of disability. It has a care component and a mobility component. The mobility component – for help with walking difficulties – is paid at two different levels. The care component – for help with personal care needs – is paid at three levels.

Attendance Allowance (AA) is available for people with care needs which emerge after they have reached the age of 65. AA has no mobility component, but the disability tests are the same as for the middle and higher rate care components of DLA.

The *Welfare Reform Act 2012* provides the legislative framework for Personal Independence Payment (PIP), which is replacing Disability Living Allowance for people of working age. Like DLA, PIP is non-means-tested and is intended to help with the extra costs arising from ill health or disability. It has two components: a mobility component, based on an individual's ability to get around, and a daily living component, based on ability to carry out other key activities necessary to be able to participate in daily life. Each component has two rates.⁸⁶

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 2015	Standard	Enhanced
Mobility	£21.80	£57.45
Daily Living	£55.10	£82.30

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.

PIP was introduced for all new claims from April 2013, but for most existing DLA claimants the reassessment process did not begin until July

⁸⁵ [Letter from The Rt Hon Iain Duncan Smith to Frank Field regarding the report Benefit sanctions policy beyond the Oakley Review](#), 18 November 2015

⁸⁶ For further information see Commons Library briefing, [Draft Social Security \(Personal Independence Payment\) Regulations 2013](#), 6538.

2015. Reassessment is gradually being extended to further postcode areas so that by late 2017 all remaining working age DLA claimants will have been invited to claim PIP.⁸⁷

The 2010 Government believed that Personal Independence Payment would have certain advantages over Disability Living Allowance:⁸⁸

- Target support more closely on those most in need.
- Be more responsive as claimants' circumstances change.
- Based on a fairer, more transparent and consistent assessment.
- Easier for claimants, DWP staff and disability organisations to understand.

However, from the outset the 2010 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%, giving savings of around £1.5 billion a year by 2016-17. Revised estimates published by DWP suggest that by 2018, around 607,000 fewer people will receive PIP than would have got DLA – a 28% reduction in the caseload. The estimated breakdown of the PIP caseload at May 2018 suggests that expenditure in that year will be around £2.5 billion lower than expenditure on DLA would have been; this equates to savings of 27%.⁸⁹

In responses to the 2010 Government's consultation on DLA reform, disability organisations voiced concern about the cut in expenditure, which many felt overshadowed other positive aspects of the Government's proposals and would exacerbate the link between poverty and disability. The 20% savings target was criticised as arbitrary and punitive, particularly in the wider context of public service and benefit changes which disproportionately impacted disabled people. There was also concern that focusing help on those with the greatest need would exclude many disabled people on the lowest rates of DLA who might not be able to access support elsewhere. Others questioned whether the savings would in fact be made, given the likely knock-on effect in terms of increased demand on the NHS and social care.⁹⁰

In its report *Implementation of the Right of Disabled People to Independent Living*, the Joint Committee on Human Rights commented:

Significantly fewer people will receive PIP in comparison with those currently receiving DLA. DLA was conceived as a means to enable disabled people to meet the extra costs associated with overcoming barriers to independent living. We fear the introduction of PIP will restrict the ability of disabled people to overcome these barriers and enjoy the right to independent living.⁹¹

⁸⁷ See DWP, *Timetable for PIP replacing DLA*, updated 26 August 2015.

⁸⁸ National Audit Office, *Personal Independence Payment: early progress*, 2014 para 1.5. See also Commons Library briefing, *Disability Living Allowance reform*, 5869

⁸⁹ Figures at 2013/14 prices based on 2013/14 PIP/DLA rates.

⁹⁰ Commons Library briefing, *Draft Social Security (Personal Independence Payment) Regulations 2013*, 6538, pp16-19.

⁹¹ HL 257/HC 1074 Session 2010-12, para 146.

Eligibility Criteria

The 2010 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.⁹²

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:⁹³

- Help needed by some people to move around indoors, e.g. when using stairs or getting in and out of bed.
- 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 could result in significant numbers of people currently benefiting from the higher rate DLA mobility component failing to qualify for the enhanced rate mobility component in PIP.⁹⁴ For those using the Motability scheme, this would result in their adapted vehicle being withdrawn.⁹⁵

Assessments and Reassessments

The Department for Work and Pensions is responsible for handling claims for PIP and making decisions on entitlement to benefit. Contracted assessment providers are however a key element in the claims process. Atos Healthcare holds the contracts for undertaking assessments in Northern England and Scotland, and London and Southern England. Capita Business Services Ltd holds the contracts covering Wales and Central England, and Northern Ireland.⁹⁶

The PIP application form and any accompanying evidence submitted by the claimant are forwarded the assessment provider, who decides whether a face to face consultation is necessary. The Government's initial expectation was that around a quarter of PIP claims could be

⁹² DWP, [Personal Independence Payment: initial draft of assessment criteria](#), May 2011.

⁹³ Disability Rights UK, [PIP assessment criteria and thresholds consultation: our response](#).

⁹⁴ Commons Library briefing, Draft Social Security (Personal Independence Payment) Regulations 2013, 6538, section 4.

⁹⁵ Just Fair Coalition, [Implementation of the International Covenant on Economic, Social and Cultural Rights in the United Kingdom: Submission to the Committee on Economic, Social and Cultural Rights](#), 2015, pp165-167.

⁹⁶ These are separate from the DWP Medical Services contract now held by Maximus.

decided on the basis of the completed form and evidence submitted, without the person having to attend a face to face assessment.⁹⁷

A key feature of PIP is that all awards are subject to periodic review. Some organisations argue that people with profound life-long disabilities or progressive conditions should not have to face regular reassessment. There is also concern that regular reassessment could cause anxiety and affect physical or mental health of vulnerable claimants.

The 2010 Government did not agree to exemptions from reassessment for people with particular disabilities, but said that decisions on the frequency of reassessments would take into account of the nature of the person's disability and the likelihood of a change in their circumstances. It also said that, for some individuals, a face-to-face consultation would not be necessary for their award to be reassessed.⁹⁸

In a 2014 report, the National Audit Office said that, 'poor early operational performance', had led to, 'long uncertain delays,' for PIP claimants.⁹⁹ The DWP had, it concluded, failed to allow sufficient time to test the new system and unexpected delays in the assessment process had led to a large backlog of claims.¹⁰⁰ By October 2015, the average clearance time for new PIP claims under the normal rules had fallen to 11 weeks, and 6 days under the special rules for terminally ill people.¹⁰¹

In August 2015, Citizens Advice reported that Personal Independence Payments had overtaken Employment Support Allowance as the most common problem people came to Citizens Advice for help with.¹⁰²

Universal Credit

Universal Credit (UC) is replacing tax credits and means-tested benefits (including income-related ESA and Housing Benefit) for working age families. UC is not expected to be fully introduced until 2021, and claimants of income-related ESA are expected to be one of the final groups to be migrated to UC.

UC rationalises support for disabled people by replacing the existing disability premiums and additions in means tested-benefits and tax credit with additions payable at two rates only. People with severe disabilities will benefit from the changes, but disability organisations are concerned that some groups of disabled people will get less than they do under the present system. There is particular concern that some families with disabled children will get significantly less than they currently do through tax credits.

⁹⁷ HC 916 2012-13, Q14.

⁹⁸ [HC Deb 4 February 2013 cc98-9w](#).

⁹⁹ National Audit Office, [Personal Independence Payment: early progress](#), 2014.

¹⁰⁰ Commons Library briefing, [Introduction of Personal Independence Payment](#), 6861.

¹⁰¹ DWP, [Personal Independence Payment statistics to October 2015](#).

¹⁰² Citizens Advice, [PIP failures are risking people's ability to live independently, says Citizens Advice](#), 16 August 2015.

A 2012 report by a coalition of disability and welfare rights organisations highlighted the possible negative impact of UC on three groups in particular:¹⁰³

- Around 100,000 disabled children could lose up to £28 a week.
- An estimated 230,000 severely disabled adults who do not have another adult to assist them could receive between £28 and £58 a week less than they do now because under UC there will be no equivalent of the Severe Disability Premium currently payable with means-tested benefits.
- Up to 116,000 disabled people in work could lose around £40 a week because under UC there is no additional support for disabled workers who are found 'fit for work' by the Work Capability Assessment.

Concerns about the impact of UC on disabled people were also voiced by the Work and Pensions Committee.¹⁰⁴ In its response, the Government emphasised that there would be transitional protection so that no-one whose circumstances remained the same would lose out in cash terms as a result of the move to UC.¹⁰⁵

Part 6 of Commons Briefing, [Draft Universal Credit Regulations 2013](#), looks in more detail at the implications of UC people with disabilities.

As noted above, the *Welfare Reform and Work Bill 2015-16* includes provisions which abolish the ESA Work-Related Activity Component for new claims from April 2017. The corresponding 'limited capability for work' element in Universal Credit is also abolished. This means that for adults, only those in the Support Group will receive additional support for disability with their UC award.

Under the 'Permitted Work Rules', ESA claimants can engage in paid work in certain circumstances without it affecting their benefit.¹⁰⁶ These provisions, which replaced the previous 'therapeutic work' rules, are primarily intended to be a 'stepping stone to coming off benefit,' and for most people permitted work cannot be undertaken indefinitely.¹⁰⁷

There is no equivalent of the Permitted Work Rules in Universal Credit, but the previous Government pointed out that UC provided work incentives for people with disabilities or health conditions, 'through a generous work allowance, topped up by universal credit's flat taper rate.'¹⁰⁸ However, from April 2016 the UC work allowances will be reduced for most groups:

- For UC claimants with a Limited Capability for Work whose award does not include an amount for housing costs, the work allowance will reduce from £647 a month to £397.

¹⁰³ Citizens Advice, [Holes in the safety net: the impact of universal credit on disabled people](#), October 2012.

¹⁰⁴ Work and Pensions Committee, [Universal Credit implementation: meeting the needs of vulnerable claimants](#), 3rd Report of Session 2012-13, HC 576, chapter 4.

¹⁰⁵ [Cm 8537](#), February 2013, paras 59-67.

¹⁰⁶ Disability Rights UK Factsheet F35, [Permitted Work](#), 2015.

¹⁰⁷ [HC Deb 11 January 2011 c252w](#) [question on Incapacity Benefit: Unpaid Work].

¹⁰⁸ [HC Deb 18 November 2013 c690w](#); there will however be transitional protection for those doing permitted work at the point of migration to UC, so that they do not lose out in cash terms ([HC Deb 24 June 2013 cc29-30w](#)).

- For UC claimants with Limited Capability for Work whose award does include an amount for housing costs, the work allowance will remain £192 a month.

Finally, families with disabled children may be affected by the current Government's decision to limit the child element in Universal Credit (and in tax credits) to two children for new claims and births after April 2017. For third or subsequent children born after that date with a disability, an additional amount in respect of this will still be paid.¹⁰⁹

Benefit Levels

There were two significant developments regarding benefits uprating under the 2010 Government. Since 2011, the default measure of price inflation used for uprating benefits and tax credits has been the Consumer Prices Index (CPI). Prior to this it was:

- the Retail Price Index for pensions and non-means tested benefits.
- the Rossi index (RPI less certain housing costs) for means tested benefits.

As CPI tends to rise more slowly than either the RPI or Rossi, the long-term savings are expected to be substantial. The Office for Budget Responsibility forecasts savings from switching to CPI of £5.2 billion a year by 2019/20.¹¹⁰

Secondly, the [Welfare Benefits Up-rating Act 2013](#) limited increases in most working-age benefits to one per cent a year for three years from 2013/14. Extra costs disability benefits, Carer's Allowance, the disability elements of tax credits and the disability and carer's premiums payable with means-tested benefits, continued to rise in line with the CPI, but families with disabled people might still be affected by the uprating change since increases in the main rates of income replacement benefits, the main tax credit elements, and the standard allowance for single persons and couples in Universal Credit, were limited to 1% also. The Work-Related Activity Component of ESA, together with the 'limited capability for work' element and the lower rate addition for disabled children in Universal Credit, were also limited to 1% increases.

The decision to limit increases in benefits to below inflation was historically unprecedented, resulting in permanent real terms reductions in benefits and tax credits rates, although lower than expected inflation has limited the impact. Further information on this uprating policy is given in Commons Library briefing, [Welfare Benefits Uprating Bill](#).

The *Welfare Reform and Work Bill 2015-16* goes further, freezing the rate of most working age benefits for four years. Savings are forecast of £4 billion a year by 2020/21. The Institute for Fiscal Studies estimates that the cumulative effect of this fixed uprating and four year freeze will be a real terms cut of 8% between 2012 and 2019.¹¹¹

The actual impact on the living standards of those in receipt of benefits or tax credits could be greater if, as studies suggest, the inflation

¹⁰⁹ See section 6 of Commons Library Briefing, [Welfare Reform and Work Bill 2015-16](#).

¹¹⁰ OBR, [Policy Measures Database](#), 7 April 2015.

¹¹¹ IFS, [Benefit changes and distributional analysis](#), July 2015.

experience of poorer households differs from that of other groups in the population.¹¹²

While extra-costs disability benefits such as DLA, disability elements in tax credits, disability and carer premiums payable with means-tested benefits, and the ESA Support Component will continue to rise in line with the CPI, many families with disabled people will still be affected by the four year freeze since the main rates of income replacement benefits, the main tax credit elements and the ESA Work-Related Activity Component (or the Universal Credit equivalent) will be frozen.

Real terms reductions in benefit levels are occurring in the absence of any official empirical study of the adequacy of existing benefits and the extent to which households dependent on out-of-work benefits, including those with disabled people, can meet minimum needs.¹¹³

Benefit Cap

In 2013, the Coalition Government introduced a cap on the total amount of household benefits a person could receive. This was set at £500 per week for a family and £350 for a single person (or £26,000 and £18,200 annually). 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.

Whilst most disabled claimants are exempt from the cap as a result of receiving one of the benefits listed above, issues have arisen 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 14.¹¹⁴

The Department for Work and Pensions said that it is considering the judgement and will explain its position in due course. During consideration of the *Welfare Reform and Work Bill 2015-16* in the Lords an amendment was moved to exempt people in receipt of carer's allowance or disability benefits from the cap.¹¹⁵ In response to the

¹¹² Commons Library Briefing, [Welfare Benefits Up-rating Bill](#), section 5.1; ONS, [Variation in the inflation experience of UK households: 2003-2014](#), 2014; Adams and Levell, [Measuring poverty when inflation varies across households](#), Joseph Rowntree Foundation, 2014.

¹¹³ Commons Library Briefing, [Welfare Benefits Up-rating Bill](#), section 2.

¹¹⁴ [Hurley v Secretary of State for Work and Pensions](#) [2015] EWHC 3382 (Admin).

¹¹⁵ [HL Deb 21 December 2015 c2362](#).

amendment, which was withdrawn, Lord Freud made reference to the High Court decision saying:

Clearly, noble Lords will be aware of the High Court judgment in the case of Hurley and others. The Government are considering this closely. Can I ask noble Lords to allow me to come back to them on this important issue at a later date? By that I am hopeful that it will be on Report.¹¹⁶

In the meantime there is no change in the application of the cap to carers.¹¹⁷

The *Welfare Reform and Work Bill 2015-16*, includes measures to reduce the benefit cap to £20,000 per year (£385 a week) outside London, and £23,000 per year (£442 a week) in London.

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

¹¹⁶ [HL Deb 21 December 2015 c2363](#).

¹¹⁷ DWP, [Housing Benefit Urgent Bulletin HB U2/2015](#), 26 November 2015.

3.4 Access to Justice

Articles 12 and 13: Equal recognition before the law and Access to justice

Article 12 reaffirms the right of persons with disabilities to recognition before the law, including legal capacity on an equal basis with others in all aspects of life. States Parties are required to provide support for persons with disabilities in exercising this capacity and to safeguard the fundamental rights of persons with disabilities including those relating to property.

Article 13 requires States Parties to ensure that persons with disabilities have access to justice on an equal basis with others, including appropriate adjustments to allow effective participation in all legal proceedings and appropriate training for those working in the administration of justice.

Legal Aid Reforms

Introduced in June 2011, the *Legal Aid, Sentencing and Punishment of Offenders Bill* was subject to much criticism on the grounds it was removing vital financial support for legal aid to people with disabilities. Richard Hawkes, the chief executive of the disability charity Scope, responding to the Bill explained:

For welfare reform to work, disabled people have to get support to appeal decisions relating to their benefits, especially within a system where errors are commonplace. Cutting legal aid in this area will make it harder for disabled people to get the right support and ultimately could drive more people further away from work.¹¹⁸

Likewise, the Law Society was highly critical of the Bill:

Today's Legal Aid, Sentencing and Punishment of Offenders Bill is more destructive to access to justice than we first thought possible. It is the single biggest attack on state-funded legal advice for the poor and vulnerable since the legal aid system was introduced.¹¹⁹

Many legal commentators reported that the Bill would be removing, 'assistance and representation from some of the least well off – both financially and socially – in the country and those least able to fight back politically ... it is massively – if indirectly – discriminatory against women, ethnic minorities, the disabled and those on low income or subsistence benefits.'¹²⁰

The Equality Impact Assessment published alongside the consultation paper on reforming legal aid concluded the proposals did have the potential to disproportionately affect people with illness or disabilities.¹²¹

According to the Justice Committee, people with disabilities and other vulnerable groups rely more on legal aid services than the less vulnerable, and concluded there was potential for disabled people to be disproportionately hit by the changes.¹²² This was echoed in research by the University of Warwick which found concerns among practitioners

¹¹⁸ *BBC News*, '[Warning over legal aid cuts for disabled people](#)', 31 October 2011.

¹¹⁹ Commons Library briefing, '[Legal Aid, Sentencing and Punishment of Offenders Bill \[205 of 2010-12\]](#)', RP11-53, p21.

¹²⁰ Nearly Legal blog, '[Ask not for whom the bill tolls](#)', 21 June 2011.

¹²¹ Ministry of Justice, *Legal Aid Reform: Cumulative Impact*.

¹²² Justice Committee, '[Government's proposed reform of legal aid](#)', 3rd report of Session 2010-12, HC 681-I.

working in legal aid funded civil law of particularly severe impacts on certain groups of clients, including those with disabilities.¹²³

There have been two legal challenges against cuts to the provision of legal advice services: In *Greenwich Community Law Centre* there was a challenge to the decision not to allow an application for judicial review against the decision to stop funding for a service providing legal advice to vulnerable people.¹²⁴ The appeal was dismissed as it was held the local authority had due regard to its equality duties when making the decision. In *Rahman* there was a successful challenge to a decision to stop funding services which provided legal advice to disabled people. The decision was held to be unlawful, as in making the decision the local authority had failed to have due regard to its equality duties.¹²⁵

Employment Tribunal Fees

The employment tribunal system was created in 1964; until July 2013 individuals were not required to pay any fees to take their claims to a tribunal. Since then, claimants have had to pay separate fees to issue their claim and have it heard, unless they qualify for a reduction or waiver on the grounds of having limited wealth and low income.¹²⁶

The introduction of fees coincided with a steep decline in the number of tribunal cases:

Complaints brought to Employment Tribunals, 2008/09 – 2015/16 Q1 & Q2

Financial Year	Complaints of Disability Discrimination	All Complaints ¹²⁷	Total claims	Total cases
2008/09	6,578	266,542	151,028	69,726
2009/10	7,547	392,777	236,103	78,619
2010/11	7,241	382,386	218,096	66,547
2011/12	7,676	321,836	186,331	64,909
2012/13	7,492	332,859	191,541	60,982
2013/14	5,196	193,968	105,803	37,345
2014/15	3,106	129,966	61,308	18,341
2015/16 Q1 & Q2	1,750	80,653	35,635	9,375

Source: Ministry of Justice, [Tribunals and gender recognition statistics quarterly](#), July to September 2015, table 1.2

¹²³ Byrom, N., *The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients*, 2013, pp5-6.

¹²⁴ *R (On the Application of Greenwich Community Law Centre) v Greenwich LBC* [2012] EWCA Civ 496.

¹²⁵ *R (On the Application of Rahman) v Birmingham City Council* [2011] EWHC 944 (Admin).

¹²⁶ The issue fee is £160 or £250 and the hearing fee is £230 or £950; GOV.UK, [Make a claim to an employment tribunal](#), [website accessed 21 December 2015].

¹²⁷ Claims may be brought for several reasons, so the number of complaints is greater than the number of claims. The number of claims is greater than the number of cases as there may be more than one claimant per case.

Employers argued that the introduction of fees would reduce the costs they incur in defending vexatious claims. Others, including organisations representing employees, are concerned that affordability may now be a barrier to those seeking justice.

Disability Rights UK argues that the introduction of fees makes it more difficult for disabled people, who often have lower incomes and are at greater risk of poverty, to access justice.¹²⁸ Research by the Equalities and Human Rights Commission found that when compared to non-disabled men, disabled men have a pay gap of 11%, and disabled women of 22%.¹²⁹ In their interim report, the EHRC noted that the introduction of fees in employment tribunal cases could be a barrier to people with disabilities exercising their rights, and called for the Government to provide evidence of the effect the fees were having on disabled people and describe the measures to prevent any negative impact.¹³⁰

In its submission to the House of Lords Select Committee on the Equality Act 2010 and Disability, the Law Society highlighted that in disability discrimination cases the fees to be paid are high relative to the average awards to successful claimants.¹³¹ The Law Society also reported it had received evidence that the introduction of tribunal fees has emboldened those employers 'less careful' with the rights of their employees:

More subtly – while we have no quantitative evidence for this – employment lawyers tell us that they are seeing employers who are 'less careful' of the rights of employees (including those with disability) than they were prior to the introduction of fees. These employers correctly assess the risk of a claim as significantly reduced and behave accordingly.¹³²

Citizens Advice argues that tribunal fees are deterring workers with legitimate grievances against their employers from bringing a case to the Employment Tribunal. Its research found that four out of five prospective claimants are put off by the current level of fees.¹³³

That victims of discrimination are unable or unwilling to face the financial risk of bringing a claim is supported by research conducted by Acas. Among the 63% of prospective claimants who could not reach an agreement through the Acas early conciliation process and who then decided not to pursue the claim, the most frequently reason cited was the fees.¹³⁴

¹²⁸ Disability Rights UK, [Supplementary Submission to the House of Lords Select Committee on the Equality Act 2010 and Disability](#), September 2015.

¹²⁹ EHRC, [Research report 9: Pay Gaps Across Equalities Areas](#), 2015.

¹³⁰ EHRC, [Monitoring the Implementation of the UN Convention on the Rights of Persons with Disabilities](#), 2014, p17.

¹³¹ Law Society, [Submission to House of Lords Select Committee on the Equality Act 2010 and Disability](#), September 2015 para. 18.

¹³² *Ibid.* para. 22.

¹³³ Citizens Advice, [Four in five deterred by employment tribunal fees](#), December 2014.

¹³⁴ Acas, [Evaluation of Acas Early Conciliation 2015](#), 2015, p.97.

3.5 Healthcare

Article 25: Health

Under Article 25, people with disabilities have the right to the highest attainable standard of health without discrimination. States Parties are required to make reasonable adjustments to ensure access to healthcare for people with disabilities, including local services, and to provide services needed by persons with disabilities specifically because of their disability.

The [Equality Act 2010](#) requires NHS bodies across the UK, and those carrying out public functions on their behalf, to make reasonable adjustments for people with disabilities. This statutory duty aims to ensure that a disabled person can use a service as close as reasonably possible to the standard usually offered to non-disabled people. NHS bodies must consider in advance and on an on-going basis about what reasonable adjustments disabled people with a range of impairments might need to use their services. For example, people who are affected by hearing or sight loss should be able to access information in a format appropriate for them, and any communication support that they need.

Learning Disabilities and Mental Health

The availability and quality of health services for people with learning disabilities or mental illnesses have come under particular scrutiny. Government and NHS bodies across the UK have committed to address concerns that people with a learning disability or mental illness experience poorer access to health services and worse health outcomes, including above average rates of premature mortality.

Further information on the efforts made to reduce premature mortality rates and improve the uptake of annual health checks and personalised health action plans is available in the Library briefing, [Learning Disability – Policies and Issues](#).

The UK Government and NHS England also committed to an overhaul of inpatient and community services for people with a learning disability following the abuse uncovered at Winterbourne View Hospital. This transformation would see a shift from caring for people in secure inpatient institutions to supporting people to live as independently as possible in the community.

The Government has announced £1.25 billion of additional investment in mental health over the next five years, to introduce new access standards for people with mental health and to improve children and adolescent services in particular. Further information is available in the Library briefing [Children and young people's mental health – policy, CAMHS services, funding and education](#), and the POST note [Parity of Esteem for Mental Health](#).

3.6 Employment

Article 27: Work and Employment

This article requires States Parties to recognise the right of persons with disabilities to work on an equal basis with others. Specifically States Parties are required to promote and safeguard the right to work, prohibit discrimination and provide assistance in finding, obtaining and returning to employment.

Disability Employment Gap

The Government has set itself the aim of achieving 'full employment' in this Parliament. They have stated that a key part of achieving this aim is to increase employment levels amongst people with disabilities.¹³⁵

In the third quarter of 2015, 46% of disabled people aged 16-64 were in employment; this was a gap of 35 percentage points compared to people without a disability.¹³⁶

Employment Rates (%) in the UK, people aged 16-64, not seasonally adjusted

	Disabled	Not Disabled	Gap in % points
Q3 2013	43.4	77.9	34.5
Q4 2013	44.2	78.1	33.9
Q1 2014	44.2	78.2	34.0
Q2 2014	44.9	78.6	33.7
Q3 2014	45.8	79.3	33.5
Q4 2014	45.6	79.4	33.9
Q1 2015	46.3	79.3	32.9
Q2 2015	45.9	79.4	33.5
Q3 2015	45.7	80.5	34.8

Source: ONS Labour Market Statistics, November 2015, table A08

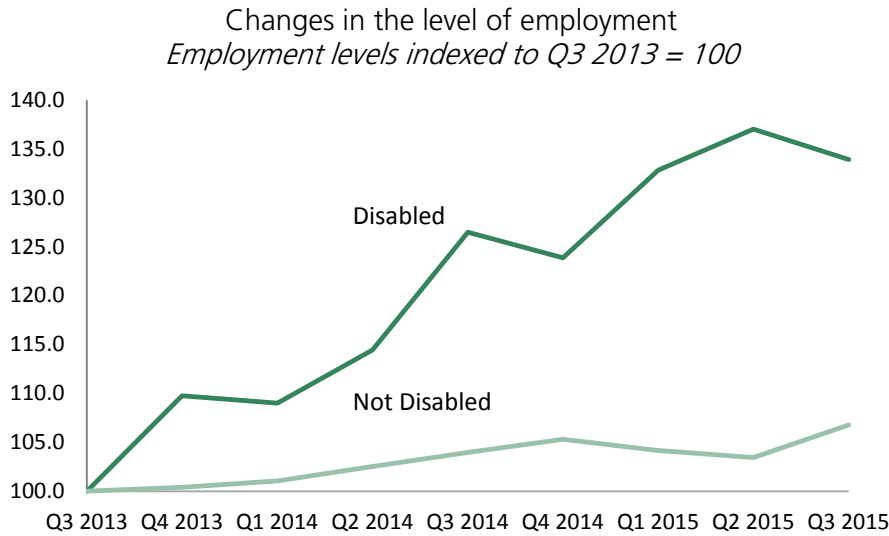
Note: Gap is calculated as the difference between the employment rate of people with disabilities and those without a disability.

The gap is currently about the same as it was in Q3 2013, but 1.3 percentage points higher than the previous quarter. Due to changes to geography and definitions, data can only be compared back to 2013.

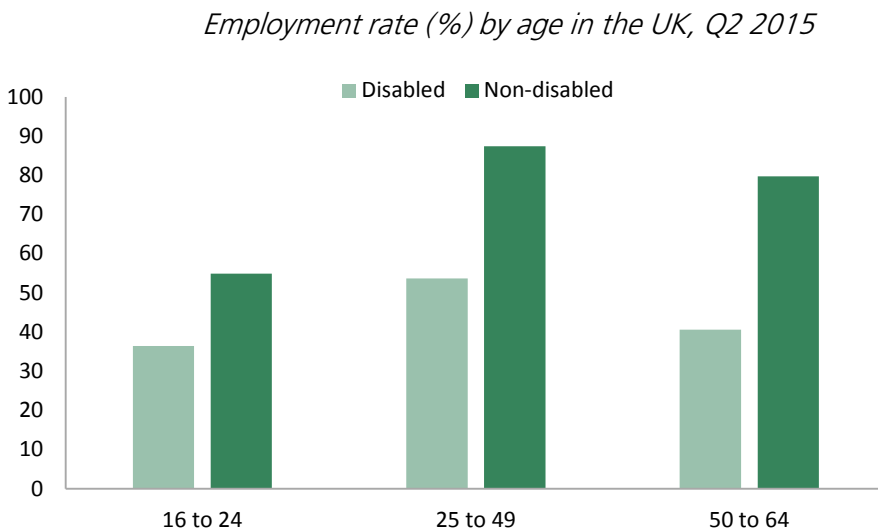
¹³⁵ HM Treasury, *Spending review and autumn statement 2015*, para 1.130.

¹³⁶ 81% of people without a disability were in employment during the same period. In this instance, disability is defined as under the *Equality Act 2010*.

Both the employment levels and rate of employment of all people have been increasing since 2013. In Q3 2015, just over 3.2 million disabled people were in employment, an increase of 12% on the same period in 2013.¹³⁷ The chart below shows that the level of employment amongst disabled people has been rising more quickly than for non-disabled people:



The Department for Work and Pensions has also produced data showing how the gap varies by age. It was smallest for those aged 16 to 24 (although the employment rate for both disabled and non-disabled people in this age group were low) and it was at its largest for those aged 50 to 64:¹³⁸



¹³⁷ ONS, [Labour Market Statistics, November 2015](#), table A08.

¹³⁸ DWP, [Fulfilling Potential: outcomes and indicators framework: second annual progress report](#), 2015, p13.

Employment Schemes

In the last Parliament, the independent [Sayce review](#) examined how to support disabled people in work. The 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.¹³⁹

Currently, people with disabilities in Great Britain may receive back-to-work support through the Work Programme.¹⁴⁰ However, for those whose needs cannot be met through mainstream employment support, [specialist disability employment programmes](#) are available.

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.

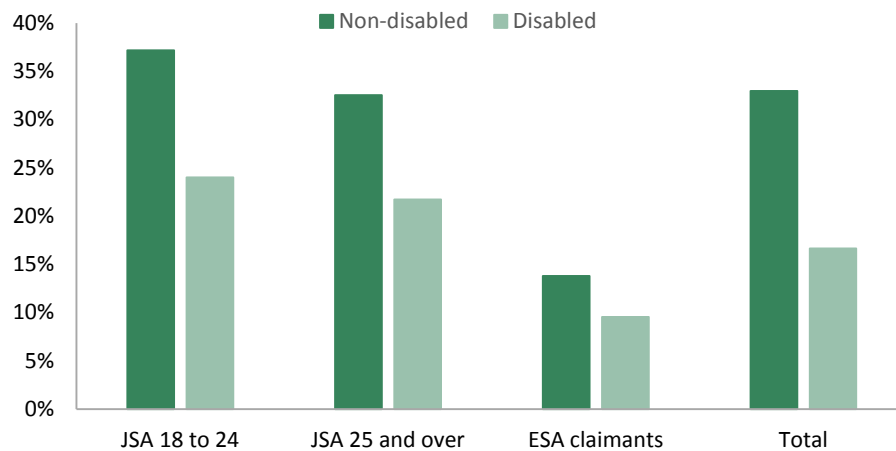
ESA is available to individuals who are ill or disabled and require personalised help to get into work or financial support if they are unable to work. Claimants who are expected to be fit for work within 12 months are referred to the Work Programme on a mandatory basis following a Work Capability Assessment. 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. Since June 2011, just over 320,000 ESA claimants have been referred to the Work Programme. Data based on a claimant's self-assessment of disability show that to September 2015, 33% of people without a disability have received a job outcome on the Work Programme, compared to 16% of people with a disability:

¹³⁹ DWP, [Sayce Review response: Government to support thousands more disabled people into mainstream employment](#), 7 March 2012.

¹⁴⁰ Commons Library briefing, [Work Programme: background and statistics](#), 6340.

Job outcomes as a proportion of referrals
June 2011 to September 2015



Note: Group of non-disabled ESA claimants is much smaller than the the group of disabled claimants.

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 2014.¹⁴¹ It should be noted that ESA claimants typically attend the Jobcentre no more than twice a year.

Work Choice

Work Choice is a Government specialist disability employment programme. It was introduced in October 2010 and replaced WORKSTEP and Work Preparation. It provides individuals with help through all stages of finding and getting a job and help to stay in work where the other DWP work schemes might not be suitable.

Since October 2010, 91,760 individuals started on the programme. Of these, 43% (39,490) have obtained a job outcome.¹⁴²

Access to Work

Access to Work can contribute towards the equipment an individual needs at work such as a communicator at interviews, adaptations to premises, or paying a support worker. It can also pay towards the cost of transport if an individual cannot use public transport.

The Sayce review recommended that the scheme should be transformed from being, 'the best kept secret in government to being a recognised passport to successful employment, doubling the number of people

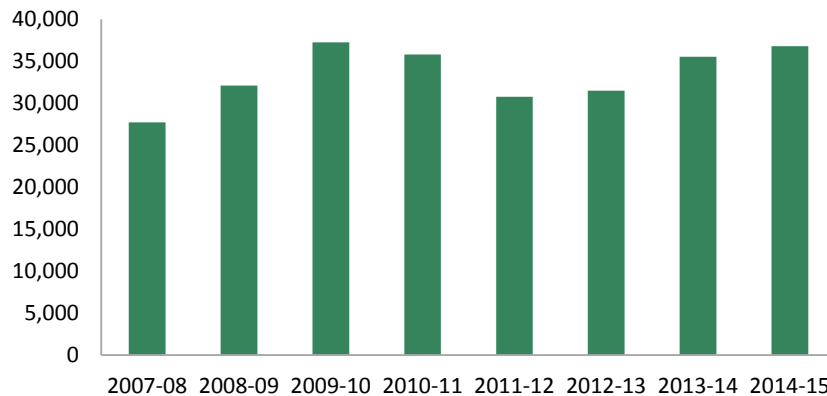
¹⁴¹ Work and Pensions Committee, *The role of Jobcentre Plus in the reformed welfare system*, 2nd Report of Session 2013-14, p3.

¹⁴² DWP, *Work Choice official statistics: September 2015*.

helped.¹⁴³ The Government accepted all recommendations on the scheme.¹⁴⁴

Between April 2007 and June 2015, 126,960 people have been assisted through this scheme. When comparing 2014/15 with the previous year, there has been a slight increase in the number of individuals helped by the scheme.

Individuals helped by Access to Work
Financial year 2007/08 to 2014/15



There was a drop in the overall number of customers helped by the scheme in 2011/12 and 2012/13 which the DWP [attributed](#) to operational changes implemented in 2010.

Over the last few years, the profile of people helped by the scheme has changed. There has been a large increase in the number of participants with mental health conditions which follows the introduction of a new mental health support system delivered by Remploy.¹⁴⁵

The Government has said that the scheme will provide awards up to a limit set at one and half times average salary from October 2015: £40,800 per person. This limit will be uprated annually in line with average salaries.¹⁴⁶ It has been estimated that if the level of award is capped at this rate, an additional 982 customers could be supported (at the average 2013/14 award of £3,045). However, it should be noted that a very small number of awards are made above this capped level.¹⁴⁷

The Government has also announced a real terms increase in spending on the scheme. This additional spending will be used to provide specialist IT equipment or support workers to help a further 25,000 disabled people into work each year.¹⁴⁸

¹⁴³ DWP, [Getting in, staying in and getting on Disability employment support fit for the future](#), June 2011.

¹⁴⁴ DWP, [Sayce Review response: Government to support thousands more disabled people into mainstream employment](#), 7 March 2012.

¹⁴⁵ DWP, [Access to Work: individuals helped up to June 2015](#), October 2015.

¹⁴⁶ [Access to Work: Written statement](#) [HCWS372], 12 March 2014.

¹⁴⁷ DWP, [Equality analysis for the future of Access to Work](#), 2015, p11.

¹⁴⁸ HM Treasury, [Spending review and autumn statement 2015](#), p37.

Future Changes to Employment Schemes

Contracts for the Work Programme are due to end in April 2017. In his 2015 Autumn Statement, the Chancellor announced that the Government would be introducing a new Work and Health Programme to replace both the Work Programme and Work Choice. The new programme will provide specialist support for claimants with health conditions or disabilities.

The Government also intends to publish a White Paper in early 2016 that will set out reforms to improve support for people with health conditions and disabilities. This will include exploring how employers can help to further reduce the disability employment gap.

4. Concluding Remarks

As can be seen from section 3, a significant number of policy changes implemented by the Coalition Government are considered to have had an impact on people with disabilities. Some of these impacts were expected and documented in Government issued equality impact assessments. Others have been recorded in research carried out by, and on behalf of, bodies such as disability charities and the Equalities and Human Rights Commission. The UN Committee will consider whether these impacts are compatible with the rights of disabled people under the Convention.

The main focus of the inquiry is likely to be on changes to welfare and social security benefits such as the Benefit Cap, changes to Employment and Support Allowance and the under-occupancy deduction from Housing Benefit for people living in social housing. However, the confidential nature of the proceedings means the exact scope of the investigation is unknown and may include other areas where Government policy has impacted on the rights of people with disabilities listed under the Convention.

The potential impact of the UN report, when published, is also unknown: the Committee can detail findings where it is believed the UK has failed to comply with the Convention, but there is no legal obligation for the UK Government to act upon them.

A previous report by the UN special rapporteur on housing which called for the under-occupancy deduction, to be suspended, was dismissed by the Coalition Government at the time as a, 'misleading Marxist diatribe.'¹⁴⁹ In relation to the current inquiry, the Prime Minister has attracted criticism from some for saying UN investigations are not always, 'all they are originally cracked up to be,' in apparent dismissal of the Committee's inquiry.¹⁵⁰

It is anticipated that the final UN report, along with the UK Government's response, will be published in 2017.

¹⁴⁹ *The Guardian*, '[Ministers savage UN report calling for abolition of UK's bedroom tax](#)', 3 February 2014.

¹⁵⁰ See section 2.

5. Further Reading

5.1 House of Commons Library Briefings

The following is a selection of Library Briefing papers which provide more information on the subjects highlighted in this paper.

Dar, A. & E. Parkin, [*Learning Disability – policies and issues*](#), 7058

Dar, A., [*Work Programme: background and statistics*](#), 6340

Long, R., [*Special Educational Needs: Support in England*](#), 7020

Garton Grimwood, G. & P. Strickland, [*Legal Aid, Sentencing and Punishment of Offenders Bill \[205 of 2010-12\]*](#), RP11-53

Haves, E. *et al.*, [*The United Nations*](#), LLN2015/15

Kennedy, S., [*Disability Living Allowance reform*](#), 5869

Kennedy, S., [*Draft Social Security \(Personal Independence Payment\) Regulations 2013*](#), 6538

Kennedy, S., [*Incapacity Benefit Reassessments*](#), 6855

Kennedy, S., [*Introduction of Personal Independence Payment*](#), 6861

Kennedy, S., [*The Work Capability Assessment for Employment and Support Allowance*](#), 5850

Parkin, E., [*Children and young people's mental health – policy, CAMHS services, funding and education*](#), 7196

Parkin, E., [*Employment and Support Allowance: An Introduction*](#), 7181

POST, [*Parity of Esteem for Mental Health*](#), 485

Wilson, W., [*The Benefit Cap*](#), 6294

Wilson, W., [*Discretionary Housing Payments*](#), 6899

Wilson, W., [*Under-occupying social housing: Housing Benefit entitlement*](#), 6272

Wilson, W., [*The impact of the under-occupation deduction from Housing Benefit \(social rented housing\)*](#), 6896

5.2 United Nations Documents

The [Convention on the Rights of Persons with Disabilities](#) and the [Optional Protocol](#) may be viewed on the OHCHR website:

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

UN Enable, [*Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities*](#), 2007

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*](#),

December 2013

5.3 Government Documents

Department for Education, [*The SEN Code of Practice*](#), 2001

Department of Education Northern Ireland, [*Special Educational Needs – A Guide for Parents*](#), 1997

Departments of Education and Health, [*The SEND Code of Practice: 0 to 25 Years*](#), 2015

Department for Work and Pensions, [*Getting in, staying in and getting on Disability employment support fit for the future*](#), 2011

Department for Work and Pensions, [*Removal of the Spare Room Subsidy evaluation: final report*](#), 2015

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HM Treasury, [*Spending Review and Autumn Statement 2015*](#), 2015

Office for Disability Issues, [*UK initial report on the UN Convention on the Rights of Persons with Disabilities*](#), 2011

Scottish Government, [*UNCRPD Draft Delivery Plan \(2016-2020\) Consultation*](#), 2015

Scottish Government, [*Supporting Children's Learning: Code of Practice \(Revised Edition\)*](#), 2010

Social Security Advisory Committee, [*The cumulative impact of welfare reform: a commentary*](#), Occasional Paper 12, 2014

Welsh Government, [*Special Educational Needs Code of Practice for Wales*](#), 2004

5.4 Parliamentary Committees

Justice Committee, [*Government's proposed reform of legal aid*](#), 3rd report of Session 2010-12

Work and Pensions Committee, [*Benefit sanctions policy beyond the Oakley Review*](#), 5th report of Session 2014-15

Work and Pensions Committee, [*Employment support for disabled people: Access to Work*](#), 2nd report of Session 2014-15

Work and Pensions Committee, [*Government support towards the additional living costs of working-age disabled people*](#), 7th report of Session 2010-12

Work and Pensions Committee, [*Impact of the changes to Housing Benefit announced in the June 2010 budget*](#), 2nd report of Session 2010-12

Work and Pensions Committee, [*Migration from Incapacity Benefits to Employment Support Allowance*](#), 6th report of Session 2010-12

Work and Pensions Committee, [*Personal Independence Payment \(PIP\): follow up, January 2013*](#), oral evidence session

Work and Pensions Committee, [Personal Independence Payment implementation December 2013](#)

Work and Pensions Committee, [Progress with disability and incapacity benefit reforms](#), one-off evidence session

Work and Pensions Committee, [Progress with Personal Independence Payment implementation 2014](#), one-off evidence session

Work and Pensions Committee, [The role of Jobcentre Plus in the reformed welfare system](#), 2nd report of Session 2013-14

Work and Pensions Committee, [Support for Housing Costs in the Reformed Welfare System](#), 4th report of Session 2013-14

Work and Pensions Committee, [Universal Credit implementation: meeting the needs of vulnerable claimants](#), 3rd report of Session 2012-13

Work and Pensions Committee, [Work Programme: the experience of different user groups](#)

5.5 Reports from Other Organisations

Acas, [Evaluation of Acas Early Conciliation 2015](#), 2015

Age UK, [Housing in Later Life](#), 2014

Byrom, N., [The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients](#), 2013

Citizens Advice, [Holes in the Safety Net: the impact of universal credit on disabled people](#), 2012

Driver Youth Trust, [Joining the Dots: Have recent reforms worked for those with SEND?](#), 2015

Equality and Human Rights Commission, [Monitoring the Implementation of the UN Convention on the Rights of Persons with Disabilities](#), 2014

International Disability and Development Consortium, [CRPD Resources and Tools](#), [website accessed 15 December 2015]

Leonard Cheshire Disability, [The Long Wait for a Home](#), 2015

Lord Low of Dalston, Baroness Meacher and Baroness Grey-Thompson, [Halving the Gap? A Review into the Government's proposed reduction to Employment and Support Allowance and its impact on halving the disability employment gap](#), 2015

National Audit Office, [Personal Independence Payment: early progress](#), 2014

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