

EXPLANATORY MEMORANDUM ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Title of the Convention

UN Convention on the Rights of Persons with Disabilities

Command Paper Number: CM

Subject Matter

1. Ratification of the UN Convention on the Rights of Persons with Disabilities (hereafter referred to as “The Convention”) in respect of the United Kingdom of Great Britain and Northern Ireland.
2. The Convention builds on existing international human rights instruments in order to explicitly reaffirm the human rights of disabled people. The Convention does not aim to establish new human rights for disabled people but sets out with greater clarity the obligation on States to promote, protect, and ensure the human rights that disabled people already have, so that they are treated on an equal basis with other people.
3. The Convention has a wide field of application. It encompasses civil and political, as well as economic, social and cultural rights. These rights cover all areas of life including: the right to life, liberty and security of the person; access to justice; personal mobility; health; education; work; recreation; and provision for equal recognition of disabled people before the law. It also makes specific provision in respect of the rights of disabled women and disabled children.
4. The European Community is a signatory to the Convention and proposes to become a party to it, as a Regional Integration Organisation, within the areas of its competence, in accordance with Convention Article 44.
5. The Convention has a linked but separate Optional Protocol which establishes two procedures aimed at strengthening the implementation and monitoring of the Convention. The first is a procedural avenue allowing individuals or groups of individuals to bring petitions to the UN Committee established to monitor implementation of the Convention claiming breaches of their rights under the Convention when all national routes of complaint have been exhausted; the second is an inquiry procedure giving the Committee

authority to undertake inquiries when reliable information is received of grave or systematic violations of Convention rights.

Ministerial Responsibility

6. The Secretary of State for Work and Pensions has the lead policy responsibility. The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for the conclusion and implementation of treaty obligations and responsibility for their application in Overseas Territories. Many other Ministers and Departments have an interest including the Chancellor of the Exchequer, the Cabinet Office, and the Secretaries of State for: the Home Office; Equalities, Minister for Women and Lord Privy Seal; Defence; Children, Schools and Families; Health; Culture, Media and Sports; Business, Enterprise and Regulatory Reform; Justice; Transport; Communities and Local Government; Innovation, Universities and Skills; International Development; Environment, Food and Rural Affairs. The Convention covers some matters which, under the UK's devolution settlements, are devolved, and the Devolved Administrations (DAs) have an interest, as well as the Secretaries of State for Scotland; Wales; and Northern Ireland.

Policy Considerations

(i) General

7. The Convention does not establish new human rights for disabled people but sets out those which disabled people are to enjoy on the same basis as people who are not disabled. In doing so, it sets out with much greater clarity the obligations on States to promote, protect and ensure the human rights of disabled people.

8. The Convention will be binding on the UK as a matter of international law. It will not form part of domestic law but may have an interpretative influence, in particular in human rights cases, and before the European Court of Human Rights and the European Court of Justice. In addition, where it covers matters within Community competence, the Convention will form an integral part of the Community's legal system and will be binding on the UK as a matter of Community law.

9. The Convention sets an internationally recognised benchmark for the human rights of disabled people against which States, including the UK, will be measured. This will help shape protection of disabled people's human rights for the future, and ensure that disabled people can enjoy the human rights that non-disabled people already enjoy.

10. The UK actively supported negotiation and adoption of the Convention, which reinforces the Government's actions to ensure that disabled people in the UK have comprehensive and enforceable civil and human rights (for example, through the Disability Discrimination Act 1995, as amended, and the Human Rights Act 1998).

11. By proposing ratification of the Convention, the Government is demonstrating its firm commitment to the development of a human rights culture, and is recognising that the Convention is a powerful statement that disabled people should be able to enjoy the same human rights as anyone else. The UK has become a world leader in disability rights, and the Government's commitment to disabled people has been demonstrated by, for example, the new Independent Living Strategy, and the legislation that placed a duty on public authorities to promote equality of opportunity for disabled people. Ratification is further demonstration of the Government's aim to achieve equality for disabled people by 2025, as set out in the report "Improving the Life Chances of Disabled People".

12. In working towards ratification, Departments and the DAs have examined their legislation, policies, practices and procedures, notwithstanding the fact that the UK already has robust anti-discrimination and human rights legislation, to ensure that the UK is compliant. The Convention will inform the development of future legislation, policies etc.

13. Ratification is in respect of the United Kingdom of Great Britain and Northern Ireland. The Overseas Territories and Crown Dependencies, and Sovereign Bases have been consulted about, and are considering, the extension of the Convention to them.

(ii) Financial

14. Any costs arising from ratification of the Convention will be covered within existing funding.

Reservations and Declarations

15. To enable ratification to take place earlier than would otherwise be possible, the UK will make reservations and interpretative declarations (as permitted by Article 46 of the Convention) in respect of Work and Employment (Convention Article 27 mainly); Education (Convention Article 24 Clause 2 (a) and 2 (b)); Equal Recognition Before the Law (Convention Article 12.4); and Liberty of Movement.

16. Details are given in **Annex A** attached.

Implementation

17. The Convention will come into force in the UK 30 days after ratification. Before ratification it will be necessary to take account of the Convention's integration into Community law by specifying the Convention as a Community Treaty under section 1(3) of the European Communities Act 1972.

18. The Office for Disability Issues (ODI) will be designated as the focal point for matters relating to implementation of the Convention and will liaise with the DAs on issues of implementation, including monitoring and reporting. The Government will report regularly to the UN on implementation of the Convention. The first report will be required two years after the UK has ratified the Convention. This report will be public and will identify how the UK is meeting the requirements of the Convention.

19. The Convention also requires that a framework including one or more independent mechanisms be established to promote, protect and monitor its implementation. This independent mechanism will comprise: the Equality and Human Rights Commission; the Scottish Commission for Human Rights; the Northern Ireland Human Rights Commission; and the Equality Commission for Northern Ireland.

20. The ODI will co-ordinate work across Government on the Convention in respect of reporting, monitoring and awareness-raising. Individual Departments will be responsible for considering the development of their policies and programmes against the requirements of the Convention. The ODI will liaise with the equality and human rights commissions in their role as the independent mechanism. The ODI will work with disabled people and their organisations in the development of an approach to the promotion, monitoring and reporting on the Convention.

21. The European Community is a signatory to the Convention and proposes to become a party to it, as a Regional Integration Organisation, within the areas of its competence, in accordance with Convention Article 44. The European Commission's proposals for a Council Decision concerning the conclusion (ie ratification) by the European Community of the Convention are the subject of a separate scrutiny process. Negotiations between the Commission and Member States on the proposals are underway. Conclusion by the Community in respect of the Convention will result in its provisions - so far as they are within Community competence - forming an integral part of the Community's legal system. The UK will need to take account of this and take implementation measures to reflect this change in Community law through

specification of the Convention as a Community Treaty (paragraph 17 above refers).

Consultations

22. A detailed Parliamentary statement on progress towards ratification was made by the then Minister for Disabled People on 6 May 2008, which identified the areas where possible reservations/interpretative declarations were under consideration at that time, and the state of play in respect of the European Community's proposals. Subsequently there have been a number of discussions with disabled people and their organisations, primarily around the possible reservations/interpretative declarations. The Government has continued to provide updates on the Convention via two websites: www.odi.gov.uk; and www.direct.gov.uk. Information is also available on www.un-convention.info run by an independent advisor to the Government on disability and human rights.

23. The Government will continue to work with the independent mechanism of the framework, to promote, protect and monitor implementation of the Convention and with disabled people and their organisations, as the UK implements the Convention.

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The Department for Work and Pensions

ANNEX A

Work and Employment – Convention Article 27 mainly

The Government intends to enter a reservation in respect of service in the Armed Forces, to preserve the position already reflected in the Disability Discrimination Act 1995, as amended (DDA). Service in the Armed Forces is exempt from the employment provisions of the DDA. This approach is entirely consistent with EU Council Directive 2000/78/EC.

The Government decided to exclude members of the Armed Forces in the DDA because Armed Forces personnel need to be combat effective in order to meet a world-wide liability to deploy, and to ensure that military health and fitness remain matters for Ministry of Defence (MoD) Ministers based on military advice, not for the courts.

The Armed Forces already demonstrate their willingness to follow the spirit of disability legislation by recruiting people who have some degree of impairment, and by retaining a significant number of personnel who have become disabled in the course of their duties. However, demands upon the Armed Forces continue to be challenging. Recruiting non-deployable people, or those with limited deployability, would have an impact on the general levels of non-deployability within the Services and would run the risk of creating a two-tier system between those who are deployable and those who are not. This would have an adverse effect on morale and operational effectiveness by placing undue stress on those fit to serve on the frontline and who would have to absorb the increased operational turn-round and frequency of operational tours.

“The United Kingdom ratification is without prejudice to provisions in Community law that Member States may provide that the principle of equal treatment in employment and occupation, in so far as it relates to discrimination on the grounds of disability, shall not apply to the armed forces. The United Kingdom accepts the provisions of the Convention, subject to the understanding that its obligations relating to employment and occupation, shall not apply to the admission into or service in any of the naval, military or air forces of the Crown”.

The United Kingdom reservation and an equivalent one proposed by the European Commission in respect of its proposals for European Community Conclusion (ie ratification) of the Convention are the subject of discussion with the European Commission.

Education - Convention Article 24 Clause 2 (a) and 2 (b)

The Government intends to enter an interpretative declaration to make clear that the UK general education system includes both mainstream and special schools, thereby clarifying how the UK Government interprets the Convention. This will make it clear that special schools are considered part of the UK's general education system and that parents have the right to express a preference for a special school.

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".

A reservation will be entered to allow for circumstances where disabled children's needs may be best met through specialist provision, which may be some way from their home – so they will need to be educated outside their local community. This also maintains parental choice for schools outside the local community.

"The United Kingdom reserves the right for disabled children to be educated outside their local community where more appropriate education provision is available elsewhere. Nevertheless, parents of disabled children have the same opportunity as other parents to state a preference for the school at which they wish their child to be educated".

Liberty of Movement

A general reservation will be entered in order to retain the right to apply immigration rules and to retain the right to introduce wider health screening for applicants entering or seeking to remain in the UK, particularly in the event of a global health emergency, if this is considered necessary to protect public health.

This clarifies the Government's understanding that the Convention does not create new or additional rights for non-UK national disabled people relating to the entry into, stay in and departure from the United Kingdom.

This reservation will be subject to review 12 months after the UK has ratified the Convention in order to assess whether there is a continued need for it in practice.

“The United Kingdom reserves the right to apply such legislation, insofar as it relates to the entry into, stay in and departure from the United Kingdom of those who do not have the right under the law of the United Kingdom to enter and remain in the United Kingdom, as it may deem necessary from time to time.”

Equal Recognition Before the Law – Convention Article 12.4

Article 12.4 concerns safeguards for the exercise of substituted decision-making and includes a requirement for "regular review" by a competent, independent and impartial authority or judicial body. There is currently no review system for Department for Work and Pensions (DWP) appointees i.e. people who are appointed to claim and collect benefits on behalf of another person due to that person's lack of physical or mental capacity. Those appointee arrangements are not at present subject to the safeguard of regular review, as the Government believes this Article requires. DWP is therefore actively working towards a proportionate system of review to address this issue.

"The United Kingdom's arrangements, whereby the Secretary of State may appoint a person to exercise rights in relation to social security claims and payments on behalf of an individual who is for the time being unable to act, are not at present subject to the safeguard of regular review, as required by Article 12.4 of the Convention and the UK reserves the right to apply those arrangements. The UK is therefore working towards a proportionate system of review".