

Written evidence submitted by Rt. Hon. Sir Ed Davey MP, Patron of Disability Law Service (CVD0015)

Please accept this letter as a submission to your above inquiry. I am writing as a Patron of Disability Law Service (DLS), who have undertaken the research and analysis for this and discussed it with me.

I find their conclusions deeply disturbing, as it seems with respect to disabled people and their actions over coronavirus, the Government has breached its obligations under the United Nations Convention on the Rights of Persons with Disabilities, a problem compounded by the fact that in breach of this Treaty, the Brexit Act repealed its applicability in domestic courts.

As you are aware, the Coronavirus Act 2020 amended the Care Act 2014 to relieve local authorities of the duties to assess and meet the social care needs of their residents - including those in care homes. In England, local authorities remained under a duty to meet social care needs only where withdrawal would breach a person's human rights. I spoke out against these provision at the Second Reading on 23rd March (<https://bit.ly/2wz31lg>), though I was not then aware of the illegality of the Government's actions.

The changes from the Coronavirus Act 2020 came into effect on 31 March 2020. The government replaced the duties with a framework of guidance essentially encouraging local authorities to maintain care services where possible.

Paragraph 93 of the Coronavirus Bill Impact Assessment¹ sets out circumstances where care services could be withdrawn, that is, where a local authority is faced with "... *surging demand and reduced capacity arising from higher rates of staff absence.*" In those circumstances, and subject to notification formalities, a local authority can leave residents without the assistance they need to maintain and participate in life as they are entitled to do.

The Care Act secured assistance for people that needed help to (among other things): prepare and consume food, wash themselves, access and use the toilet, be appropriately dressed, care for their children, enjoy safety in the home, go out, participate in society, and attend to their personal development.

By contrast, in the context of community care, human rights protection secures freedom from: malnourishment and dehydration, health damaging ill-hygiene, indignity, abuse and neglect, social exclusion and death.

The Coronavirus Act is regressive legislation that has reduced statutory protection of the social rights and standing of disabled people and their carers living in England.

Moreover, it has put the UK in breach of its obligations under Article 28 the United Nations Convention on the Rights of Persons with Disabilities. Article 28(1) requires:

*States Parties recognize the right of persons with disabilities to **an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.***

It has also put the UK in breach of its obligations under Article 19 (b) of the Convention which provides:

¹ <https://publications.parliament.uk/pa/bills/cbill/58-01/0122/Coronavirus%20Bill%20Impact%20Assessment%20final%203.pdf>

Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

The Coronavirus Act has significantly lowered the social rights and protections of disabled people to an unacceptable level. That is incompatible with the commitments made by the UK under Articles 19 and 28. Also, it is contrary to various general comments and documents produced by the International Committee set up to monitor the Convention. **I have asked the Disability Law Service to elaborate on the International Committee's recommendations and they expect to be in a position to do so next week.**

The Government also introduced the Coronavirus Act in breach of Article 4(3) of the Convention:

*In the development and implementation of legislation and policies to implement the present Convention, **and in other decision-making processes concerning issues relating to persons with disabilities**, States Parties shall **closely consult with and actively involve persons with disabilities**, including children with disabilities, through their representative organizations.*

Consultation on the provisions within the Coronavirus Act was scarce or absent.

There was **no** close consultation or active involvement of disabled people prior to its implementation. In its general comments the International Committee highlights what that duty involves in detail and I have asked the Disability Law Service to elaborate on the UK's international duties and expect them to be in a position to do so next week. To my knowledge the general comments of the International Committee have not been considered by any Parliamentary Committee during the Coronavirus Act legislative process, or indeed, at any point subsequent to that.

And to compound those errors and omissions, at a time when the Government has effectively suspended the social rights of disabled people, the Government appears to have also deprived disabled people of access to the courts to assert the rights secured in the UN Convention, with its particular approach to the changes in the law it has implemented to proceed with Brexit.

Article 4(1) of the UN Convention requires that the rights secured by the Convention can be asserted in domestic courts and tribunals.² Whether by intent or oversight, the necessary access was removed from domestic law by the European Withdrawal Act 2018 (s4). Previously, access was secured under the European Communities Act 1972. When the European Communities Act was repealed on 31 January 2020 (Brexit day), with few historic exceptions, the rights secured by the UN Convention could no longer be asserted in domestic courts. This was wholly unnecessary for the implementation of Brexit, and it appears the rights of disabled people were forgotten in the rush to legislate for Brexit.

Particularly given the risk of a second wave of the virus and the fact that the so called 'easements' under the Coronavirus Act are wholly unlawful as they breach the United Kingdom's treaty obligations, it is our view that they should be repealed forthwith.

Moreover, given that Article 4(1) of the UN Convention requires the rights it secures can be asserted in domestic courts, it is our view that Parliament needs to legislate to ensure that this important treaty has the force of law.

Other changes to legislation will be covered in the subsequent correspondence from Disability Law Service.

² Additionally, under Article 5(2) the UK has guaranteed to disabled people equal and effective protection against discrimination on all grounds covered by the Convention.

I hope you will not only accept this written submission, but be willing to hear from Disability Law Service, perhaps in a witness session.

Thank you for your work on this crucial inquiry.

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