

Written evidence from Inclusion Scotland (COV0177)

Inclusion Scotland is a Disabled People's Organisation (DPO) – led by disabled people ourselves. Inclusion Scotland works to achieve positive changes to policy and practice, so that we disabled people are fully included throughout all Scottish society as equal citizens.

The COVID-19 pandemic is impacting on all areas of our lives. Disabled people are not just at risk from the virus. We are at risk from the actions of public bodies and others who do not understand who we are, what we need or what will work. Why? Because they have not asked us. Not only will this mean that thousands of us do not get what we urgently need but getting it wrong costs providers valuable time and money.

- **What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?**

On 01 April 2020, the Chair of the United Nations Committee on the Rights of Disabled People issued a statement on measures to ensure that the lives and rights of disabled people are appropriately protected in the face of the COVID-19 pandemic¹. Key recommendations included

- Ensuring safety and integrity of disabled people and accelerate measure of deinstitutionalisation from all types of institutions [e.g. care homes].
- Prevent discriminatory denial of health care or life-saving services on basis of disability [e.g. Do Not Attempt Resuscitation (DNAR) notices]²
- Safeguard the provision of food, medicines and other supplies for disabled people [e.g. those shielding]
- Information should be accessible for disabled people on an equal basis with others [e.g. BSL and EasyRead].
- Ensuring the inclusion and effective participation of disabled people.

Evidence from Inclusion Scotland's survey³ of disabled people and their carers about how the measures to deal with the outset of COVID-19 affected them suggest that the UK and Devolved Governments have not done enough to protect the rights of disabled people in line with the Committee's Statement.

- **What will the impact of specific measures taken by Government to address the COVID-19 pandemic be on human rights in the UK?**

Inclusion Scotland are concerned that the emergency measures to combat COVID-19, including the Coronavirus Act (CA) and the Coronavirus (Scotland) Act (CSA), have not been subject to adequate Equality and Human Rights Impact Assessments. We have particular concerns regarding the failure by the UK and Scottish Governments to take account of State Party obligations under the United Nations Convention on the Rights of Disabled People (UNCRPD)⁴, including:

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25765&LangID=E>

² [our comments in square brackets]:

³ The online survey ran from 01-30 April 2020 and was widely promoted to our members and disabled people through social media, newsletters and by partner organisations, including the Scottish Human Rights Commission. Nearly 900 people responded. A summary of initial findings can be found here: <https://inclusionScotland.org/COVID-19-evidence-survey/>

⁴ <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

- **Article 10: Right to life:** States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.
 - **Use of DNAR and prioritisation of treatment.**
- **Article 11: Situations of risk and humanitarian emergencies** – States Parties shall take ... all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.
 - **Too little account has been taken of the needs of disabled people in planning on how to deal with coronavirus, and disabled people and/or Disabled People’s Organisations have not been included in contingency planning processes.**
- **Article 12: Equal recognition before the law** - that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body.
 - **The CSA disappplies the key principle of the Adults with Incapacity (Scotland) Act (AWIA) that “account shall be taken of the present and past wishes and feelings of the adult so far as they can be ascertained” when assessing if they are in need of social services. This is a direct contravention of Article 12.**
 - **The CSA “stops the clock” in relation to time limited guardianship orders, contracening requirements that these should “apply for the shortest time possible” and be “subject to regular review by a competent, independent and impartial authority or judicial body”.**
- **Article 14: Liberty and security of the person** - if persons with disabilities are deprived of their liberty through any process, they are on an equal basis with others.
 - **The CSA allows extending the existing timescales for compulsory measures, such as detention or treatment orders, or reduce the safeguards that currently have to be met before these compulsory measures can be introduced, such as reports from a Mental Health Officer.**
- **Article 17: Personal integrity of the individual** - Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.
 - **The CSA “stops the clock” on medical treatment orders under the AWIA and may extend medical treatment that the adult has not consented to.**
- **Article 19: Living independently and being included in the community** – (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; (b) 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 CA changes social care support legislation allowing local authorities to provide services without an assessment. This may result in a person being discharged from hospital to a care setting that they do not wish to go to (in breach of (19a)). This may also breach Article 14.**

- **Disabled people do not receive the social care support that they need to support independent living (in breach of 19(b)).**
- **Article 21: Freedom of expression and opinion, and access to information** - Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost.
 - **Information and guidance on COVID-19 is not readily provided in accessible formats, - eg subtitled, Easy Read, Braille or BSL. Disabled people are more likely to be unable to access the internet than non-disabled people.**
 - **The Scottish Government, however, responded quickly to our request to have a BSL signer at the daily COVID-19 briefings, something the UK Government failed to provide.**
- **Article 25: Health** - Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.
 - **Disabled people pressured to sign DNAR forms, and prioritisation/deprioritisation of treatments based on a disabled person's impairment or underlying health issues.**
 - **The loss of access to the routine health treatments undermines a disabled person's rights to health and wellbeing.**
- **Which groups will be disproportionately affected by measures taken by the Government to address the COVID-19 pandemic?**

Inclusion Scotland's survey⁵ revealed that disabled people and their carers were under significant pressure:

- **Social care support has been stopped or reduced:** Almost half responding on this issue said that the COVID-19 pandemic has had an impact on the social care support they get, formal and informal. Around 30% told us their support had either stopped completely or had been reduced.
- **People have new or increased caring responsibilities:** Around 40% of those responding to this question had experienced challenges with caring for children/family members since the start of the pandemic. People are now being encouraged to return to work leaving people with a choice of caring or work.
- **Disabled people are struggling to get access to the food and medicine they need:** 64% of those responding to this question said that the crisis has had an impact on getting the food or medicine that they need for themselves or the person they care for.
- **People are being asked to sign DNAR notices:** Four respondents told us that they or someone they know had been asked to sign DNAR notices or informed that they would not be ventilated should they contract COVID-19.
- **People are concerned that they will lose their job:** 11% of respondents to this question were concerned that they could lose their job as a result of the pandemic.
- **Social distancing and isolation is proving extremely challenging:** Disabled people with and without pre-existing mental health conditions found everyday life under lock-down extremely stressful. Significant numbers of disabled people (15) with existing mental health problems told us that they are feeling suicidal at this time.

⁵ See above (<https://inclusionScotland.org/COVID-19-evidence-survey/>)

A follow up survey on those who are shielding⁶ has revealed that many of these issues have not yet been resolved⁷.

21/07/2020

⁶ Whether or not they have received a formal “shielding” letter: 55% of those shielding who responded to our follow up survey are doing so without a Chief Medical Officer (CMO) letter because they consider themselves to be a risk because of their medical condition or have been advised to shield by their GP.

⁷ The follow up survey on the impact on those who are shielding, including those who are shielding “voluntarily”, can be found here: <https://inclusionScotland.org/shielding-report/>