POLICY BRIEFING

The Rights of Disabled People to Independent Living

Summary

This report from the Joint Committee on Human Rights indicates that the right of people with a disability to independent living is at risk from factors such as the economic climate and welfare reforms. The Committee makes a number of recommendations for national and local government, which are asked to monitor and report on the impact of welfare reforms and spending decisions in adult social care. As well as summarising the Joint Committee’s report, this briefing updates on the government’s forthcoming Disability Strategy.

Overview

The right for people with a disability to live independently is enshrined in Article 19 of the United Nations Convention on the Rights of Persons with Disabilities. The Convention is the most recent treaty in the human rights framework and was ratified by the UK government in 2009. The Joint Committee on Human Rights (a Select Committee drawn from the Commons and the Lords) undertook an inquiry into progress in implementing Article 19, which is seen as fundamental to the other measures in the Convention.

The Joint Committee concludes that Article 19 is insufficient to secure disabled people’s right to independent living. It is also concerned that the cumulative effect of the economic climate and government reforms may have a negative impact. The Committee makes a number of recommendations including:

Independent living as a right

- The right to independent living should be an outcome in any forthcoming Bill on adult social care in England.
- The need and feasibility for free-standing legislation on the right should be assessed.
- The government should work with devolved administrations, regulators and disabled people’s organisations to promote understanding of the Convention in public authorities, particularly local authorities, and to monitor compliance.
Impact of current reforms

- The government’s forthcoming disability strategy should include measures to monitor the impact of tightening eligibility for adult social care.
- The shift from Disability Living Allowance (DLA) to Personal Independence Payments (PIP) should be independently reviewed with the involvement of disability organisations before being rolled out nationally.
- The government should ensure that the replacement for the Independent Living Fund (ILF) does not negatively impact on Article 19 (a consultation is due in early 2012).
- The Office for Disability Issues (ODI) and local authorities should monitor the impact of reforms and spending decisions on independent living, and should report on the extent to which the reforms are enabling national and local government to deliver on Article 19 obligations.

The report commends successive UK governments for their commitment to removing barriers and creating opportunities for people with disabilities, and affirms that the UK is acknowledged as a world leader in disability rights.

Perhaps the most immediate issue arising from this report for local authorities is the description of some disabled people living on a knife-edge of independence – if one element of support is withdrawn the whole package may fail – even to the extent of people requiring residential care. Local authorities will need to monitor the cumulative impact of changes to adult social care and those stemming from national reforms, and to do this alongside local people with a disability and their organisations.

Briefing in full

Background

Article 19 requires participating nations to ‘recognise the equal right of persons with disabilities to live in the community with choices equal to others, and… take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the Community’. Specific measures include:

- people with disabilities can choose their place of residence
- people with disabilities have access to a range of support services to support living and inclusion in the community
• general services and facilities are available on an equal basis.

In the first [compliance report](#) submitted to the UN Disabilities Committee (which monitors and reports on compliance) in November 2011, the UK government indicated that the UK approach to independent living goes beyond Article 19 and includes increasing choice and control, removing barriers and inclusion in the community.

**Legal status of the Convention**

The report describes how the Minister for Disabled People confirmed that the government was fully signed up to the Convention, but characterised it as ‘soft law’. The Committee indicates that this is ‘an unfortunate misapprehension’ about the convention’s legal status – as a treaty the Convention is legally binding – ‘hard law’ – and the government should fulfil its obligations on that basis.

The report discusses why the government may view the Convention as ‘soft law’. One reason may be because it is not incorporated into UK law, so individuals cannot go to a UK court and complain against breach of rights – compliance is through reporting to the UN Disabilities Committee. Another may be that implementing the Convention could be seen as having a degree of flexibility because of the concept of ‘progressive realisation’ in which States must take steps to fulfil rights ‘to the maximum extent of their available resources’. The report argues that this does not absolve States of the responsibility to take active steps, and that the concept of ‘non-retrogression’ (no backwards steps) means that any measures that reduce rights would require strict justification.

The report provides an in-depth analysis of the different types of legal duty in Article 19. The overarching conclusion is that Article 19 presents real obligations on public authorities to uphold the rights of people with a disability. However, existing legislation on human rights, equality and community care are insufficient to fully provide a right to independent living, therefore stand-alone legislation providing a right to independent living should be considered. The report also outlines reasons why successive governments have not so far incorporated economic, domestic and social rights into domestic law.

**Compliance and Awareness**

The Joint Committee received evidence that compliance with the Convention by public authorities in England varied. It concludes that it is unclear how the government intended to ensure compliance, especially in light of localism and changes to public authorities’ duties in England under the Equality Act 2010. It recommends that the ODI should work with others to promote awareness and understanding of the Convention among disabled people and public authorities, especially local government, and to monitor its implementation.
Progress on independent living

The Committee welcomes the cross-party commitment to independent living and identifies a number of areas of progress including:

- personal budgets and direct payments in adult social care and pilots for personal budgets in healthcare
- the Right to Control – ‘trailblazer’ pilots in eight local authority areas in which individuals can combine a range of publicly-funded budgets
- disability discrimination and equality legislation
- the Independent Living Strategy (ILS) 2008 which aimed to fill gap between national policy and people’s real experiences.

However, despite this progress, there is a long way to go. The latest ODI Life Opportunities Survey (November 2011) confirmed that adults with impairments experienced significantly greater barriers to aspects of daily life such as education, employment, transport, living standards and social activities than the general population. The Committee also heard evidence that the ILS was not being actively progressed.

Disability strategy

The Committee welcomes the government’s commitment to refresh progress on independent living, with the publication of a Disability Strategy in 2012. It also welcomes the Disability Minister’s assertion that the new strategy would build on the ILS and take the Convention as a starting point. The Committee recommends that the strategy should have a clear plan of action on Article 19, with milestones and monitoring mechanisms, and should build on the outcomes framework set out in the current ILS. It should also be the means of tackling some of the issues identified in the report, such monitoring the impact of restrictions to eligibility criteria for adult social care. The Committee notes that the government’s discussion document Fulfilling Potential (December 2011), which was aimed at including the views of people with a disability on the strategy, did not invite feedback on rights issues.

Implementing Article 19 – impact of current reforms

The Committee appreciates the ‘exceptional economic circumstances’ facing the UK, but concludes that the cumulative effect of spending cuts and welfare reforms risk breaching Article 19 obligations. In particular it points to:

- funding reductions to local authorities and tightening eligibility criteria for adult social care
- changes to DLA under the Welfare Reform Act
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- the closure of the ILF to new applicants
- caps on housing benefit.

The Committee welcomes the fact that the government changed its position during the course of the Welfare Reform Bill so that people with a disability in residential settings will now continue to be eligible for the mobility component of DLA – PIP. However it echoes the concerns of many disabled people’s organisations that the new assessment system and eligibility criteria could create a disincentive to using aids and adaptations (e.g. through reduced funding for people who are managing to live independently using equipment without, for example, recognising the fact that this may involve additional costs). The Committee indicates that PIP must be a benefit based on the additional costs of impairment rather than medical diagnosis.

The Committee is concerned that the closure of the ILF to new applicants without an alternative ring-fenced source of funding may limit the ability of disabled people to participate in society. It expects the government to address this in its forthcoming consultation paper. The Association of Directors of Adult Social Services gave evidence that people who would have previously received ILF are now coming to adult social care.

Overall, the Committee found no evidence that the government had given consideration to the Convention when developing new policies (as the Convention requires). The Committee is particularly concerned about the cumulative effect of the reforms. Independent living is achieved through complex interconnections between services and benefits, and changes to one element can have unintended negative consequences. The Committee recommends that the government should publish a unified assessment of the potential impact on independent living. The ODI should also work with local authorities to monitor the impact of reforms and spending decisions on the right to independent living, and should promote innovative ways through which to mitigate their impact.

The Convention requires disabled people to be involved in its implementation, and the Committee expressed its disappointment that specific duties under section 149 of the Equality Act no longer encourage the involvement of disabled people. The Committee recommends that the government should actively promote involvement to public authorities as a means of meeting their equality duty and in order to comply with the convention. It should also monitor access to information, advice and advocacy services, continue to support the development of user-led organisations, and implement the advocacy provisions in sections 1 and 2 of the Disabled Persons Act 1986 when reforming community care legislation.
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Comment

There are three main strands to this report:

- strengthening legal rights to independent living
- raising awareness of Convention rights
- implementing support for independent living within the context of current policies and forthcoming reforms.

The main implications for local authorities at the current time relate to the second two strands.

While it would certainly be very helpful for the government to provide more practical information about the Convention, there is more that local authorities can and probably need to do to promote local understanding of what is involved under Article 19.

In terms of implementation, it seems essential that local authorities find a way of monitoring the cumulative impact of spending decisions and welfare reforms to mitigate negative impact on people with disabilities wherever possible and to flag up irresolvable problems on a national basis.

The importance of being aware of the impact of policy is illustrated in recent legal appeals against local authority decisions to tighten eligibility criteria. These were successful on the grounds that the Court found that councils had failed to demonstrate that they had taken account of the impact the decision would have on disabled people and had failed to consult under section 149 of the Equality act 2010.

Other key areas for local authorities are ensuring that personalisation processes do not involve disincentives to the independence of individuals (such as blanket policies that a direct payment must be less than the cost of provided care) and maintaining a focus on independence and dignity in residential care.

The importance of this issue is well illustrated in the following quote from Baroness Campbell of Surbiton, a cross-bench peer and member of the Joint Committee, from an article from the Guardian.

“If my local authority cuts my care package or demands I transfer to NHS care (because they regard using a ventilator as the trigger for health services), I lose control of my life. I might have to leave parliament, or give up work altogether (because I need social care direct payments to do everything, from eating a sandwich to delivering a speech). I am only a few bureaucratic decisions away from returning to the inequality I endured at 18. It wouldn’t take long to transform all my
relationships with my colleagues, partner, family, friends into one which gives little or nothing to anyone. Everyone loses."

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