The Solutions Series: Plotting a course: Brexit and disabled people’s rights in Scotland

The Solutions Series is a series of ‘pop-up think tanks’ hosted by the Independent Living in Scotland project (ILiS), part of Inclusion Scotland. 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.
Please note – this report reflects the discussion on the day. These are not necessarily the views of Inclusion Scotland and its ILiS project.

Acknowledgements

ILiS would like to thank all the participants for their contributions to the think tank. We would especially like to thank Zara Todd, Director of the European Network on Independent Living, for chairing the think tank.

We are also grateful to the University of Strathclyde’s International Public Policy Institute for their support with briefing, staging and reporting the pop-up think tank.

Look out for more reports from the Solutions Series at www.ilis.co.uk
1. Background to the solutions series

The Solutions Series is a series of ‘pop-up think tanks’ hosted by Inclusion Scotland’s Independent Living in Scotland project.

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.

Each Solutions Series think tank brings together disabled people and others from across a range of sectors to identify solutions to a specific barrier to disabled people’s enjoyment of their rights to independent living.

The Solutions Series aims to support meaningful, focussed and strategic-level discussion across a range of perspectives by hosting subject-specific pop up think tanks and reporting on these. Participants are targeted for their expertise and their sphere of influence and capacity to represent their community of interest or sector. They are asked to come up with some of the potential solutions – including cross-sectoral responses to and suggestions for policy, practice, research and legislative change – to sometimes quite contentious issues that create barriers to the realisation of independent living for disabled people in Scotland.

‘Plotting a course: Brexit and disabled people’s rights in Scotland’ is the 8th report in the Solutions Series. It sought solutions to the potential barriers to independent living caused by policy and legislative change flowing from the decision of the UK to leave the European Union. We were conscious that we did not have a clear picture of final changes that might occur and the impact of these and took account of this in our discussions at the think tank.

The think tank took place on Monday 2nd October 2017 at the University of Strathclyde, Glasgow. It was chaired by Zara Todd, Director of the European Network on Independent Living.

A full list of participants is provided in Appendix 1.
The UK voted to leave the European Union (EU) whilst Scotland voted to remain in the EU. What does this really mean for disabled people in Scotland?

Are disabled people, their organisations and their supporters in Scotland aware of the possible implications? And is there anything that can be done to ensure disabled people in Scotland’s rights and services remain not just protected but enhanced, in a post-Brexit Scotland?

Despite the potential for significant consequences for disabled people of leaving the EU, during the run-up to the referendum almost nothing was made publicly available to disabled people about the possible impact of the vote. And, following the vote, there was not a single mention of disabled people or disability in the UK government’s White Paper on Brexit or in its position papers on Brexit negotiations.

Disabled people’s voices have been ‘nowhere in the room’ in the discourse about Brexit. In the context of this vacuum there is a need for Disabled People’s Organisations in Scotland to work together with others to plot a course towards protecting and promoting our rights now and in the future as they are affected by Brexit. We need to ensure that the rights we have which originate from EU law, keep up with future changes made by the EU, and that they are not diminished, ‘frozen in time’ or indeed withdrawn altogether.

There is an opportunity for disabled people and their organisations to frame demands to those involved and influential in Brexit negotiations and to come around a common cause with other civil society organisations to make the case for democratic accountability and a collective aspiration for a fairer, high standards Scotland post-Brexit.

As Disability Rights UK makes clear:

‘Bringing the sector together to influence effectively on this agenda could be a game changer in terms of increasing knowledge and confidence in promoting legal rights amongst disabled people and our organisations; and in terms of changing the terms of the debate on Brexit and the decisions that flow from that debate.’

1 Disability Rights UK (DRUK) (2017) The implications of Brexit for disability rights
Plotting a course: Brexit and disabled people’s rights in Scotland aimed to provide a first opportunity for disabled people and their organisations, alongside strategic decision-makers, informed professionals, sectoral experts and those with positions of influence, to do just this; discuss and debate Brexit and develop the solutions for how to defend and promote the right to independent living in the pre- and post-Brexit era.

It supported participants in highlighting concerns with transparency, scrutiny and accountability in the Brexit process, whilst taking a look at the broad sweep of policies and legislation likely to be impacted and what this means for disabled people’s rights. It provided an opportunity to propose positive steps forward for how these challenges and opportunities can be addressed by disabled people and their organisations and what needs to be in place to support that to happen.

The think tank’s discussion was framed by the following three questions:

1. What barriers might Brexit present for disabled people?

2. What opportunities might Brexit present for disabled people?

3. What do we need to do?
3. Summary of the solutions

The solutions identified and highlighted in this report originate from a variety of organisations and individuals. As such, they do not necessarily represent consensus or the only way forward.

**Engagement**

1. Disabled People’s Organisations need to create a top-line manifesto about Brexit and disability rights – a ‘statement of principles’ to inform and influence the Scottish Government, the UK Government in Scotland and other key stakeholders.

2. Disabled People’s Organisations in Scotland need to seek dialogue with the European Parliament and the Council of Europe (through intermediaries) about the implications of Brexit for disabled people in Scotland.

3. Disabled People’s Organisations and organisations for disabled people need to engage with human rights and civil society organisations to achieve common rights-based goals.

**Human rights and legislation**

4. Disabled People’s Organisations, human rights and civil society organisations should use the opportunity provided by Brexit to urge the Scottish Government to explore the possibility of incorporating the UN Convention on the Rights of Disabled People (UNCRPD) in domestic legislation.

5. Disabled People’s Organisations, human rights and civil society organisations should lobby the UK Government to ensure that the UK does not withdraw from the Council of Europe and the European Convention on Human Rights (ECHR) so as to protect the mechanisms that allow disabled people to seek redress for an infringement of their rights.

6. Disabled People’s Organisations, human rights and civil society organisations should lobby the UK Government for a ‘non-regression’ clause in the European Withdrawal Bill.
3. Summary of the solutions

Funding

7. Disabled People’s Organisations and third sector organisations need to lobby the UK Government to ensure replacement funding for DPOs and projects that support disabled people through the European Union’s Structural and Investment Funds. The new funding should also provide opportunities to make the process of applying for funding more accessible.

Accessible information

8. The UK and Scottish Governments should address the lack of accessible information available to disabled people about the process and implications of Brexit.

Social care

9. Disabled People’s Organisations, organisations for disabled people, social care providers and wider civil society organisations need to devise a shared ambition for social care post-Brexit and frame demands around freedom of movement, immigration and reciprocal agreements to ensure the sustainability of a system of social care in Scotland which delivers independent living for disabled people.

Housing

10. Disabled People’s Organisations and allies within the housing sector need to be alive to the potential implications of Brexit for tackling the shortfall of accessible and adapted housing in Scotland.
4. Summary of the discussion

Engagement

UK disabled people have too little awareness of their rights and what they can achieve – which makes it harder to explain what is at stake if we leave the EU and to facilitate engagement by disabled people across the country.

It was felt that the debate on Brexit seems to be dominated by discussion about sovereignty, trade and immigration. It is important that Equality and Human Rights are given the same prominence in the discussions about the kind of society we want to live in after Brexit.

The dominant rights issue in the current Brexit narrative is “workers’ rights”. Whilst these are vital to many disabled people, over half of disabled people of working age are not in work and many more are in receipt of pensions or too young to work. This focus omits attention to other rights and current legal protections in relation to a whole range of important issues that affect disabled people’s everyday lives – human rights, discrimination, accessibility, reciprocal agreements for healthcare, social care and social security, and access to funding for their organisations.

Although the picture in relation to future rights-enhancing law is unclear, the group recognised that human rights and civil society organisations across the UK are beginning to devise a ‘roadmap’ for a ‘fair Brexit’. It was felt that Disabled People’s Organisations need to be a driving force within this movement.

‘It is really important to have a very simple and very clear and very compelling set of arguments because, as I say, there are so many other people trying to fill this space.’

The Scottish Council for Voluntary Organisations are delivering a declaration on human rights that they are optimistic will win the support of many of Scotland’s civil society organisations. This was welcomed.

The Equality and Human Rights Commission has also recognised that Brexit presents a real opportunity for the UK and Scottish Parliaments to take progressive action to improve the human rights framework post-Brexit and ensure that the backstops – the protection that the EU provides – will not just be maintained but added to, developed and built on.
4. Summary of the discussion

To this end, the Commission has created a positive vision for equality and human rights in Britain\(^2\) and has urged UK political parties to pursue five priorities to protect and promote equality and human rights in the UK. The vision suggests measures that would maintain and improve the human rights framework in the UK and which would benefit disabled people. Disability Rights UK (DRUK), in their manifesto for disability rights in a post-EU UK, has built on this approach.

There is an opportunity for Disabled People’s Organisations to work with others to create a manifesto specifically focussing on Brexit and disability rights, nuanced to reflect the Scottish context. This would provide Scottish Ministers and others with a ‘statement of principles’ – in essence what disabled people and their organisations in Scotland need both pre- and post-transition.

‘It’s important to draw it down into perhaps almost a manifesto or something very clear and simple that can say “in terms of the long term agenda for people with disabilities in the UK, what we need is one to five”, so it’s being able to very critically articulate that message.’

It was felt that the manifesto or key principles document would also assist Disabled People’s Organisations and third sector organisations in Scotland to engage with the European Parliament (potentially through contact with MEPs aligned with this agenda on the Disability Intergroup) and the Council of Europe (via intermediaries like the European Network on Independent Living (ENIL), European Disability Forum (EDF) or the Scottish Council of Voluntary Organisations (SCVO)) about the implications of Brexit for disabled people in Scotland.

‘You need to get your message across particularly at the European level. There is quite a high degree of interest in Europe and the European Parliament and Council of Europe about what we think about Brexit and the implications for Scotland and in much of this discussion the only voice heard is that of the UK Government. Colleagues in Europe need to know the UK Government does not speak for the devolved administrations so the third sector and Disabled People’s Organisations need to play a part in that.’

\(^2\) Equality and Human Rights Commission (2017) Healing the divisions: A positive vision for equality and human rights in Britain
4. Summary of the discussion

Human rights and legislation

As well as highlighting the need to ensure that there is no regression in existing equality and human rights protections, there are opportunities presented by Brexit to improve the equality and human rights framework for disabled people in Scotland.

It was felt that Scotland has a relatively strong legal and institutional framework for human rights but that the good intentions of law and policy do not necessarily turn into good practice for disabled people.

The EU Charter of Fundamental Rights brings together in a single text all the personal, civic, political, economic and social rights that people enjoy within the EU. Article 21 of the Charter prohibits discrimination on various grounds, including disability, and Article 26 recognises the right of disabled people to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

The Charter has been of value because it provides practical social rights to disabled people and also because of the contribution it makes to the interpretation of a range of rights for disabled people and consolidation of them.

There was concern that leaving the EU and withdrawing from the Charter ‘will mean that the EU’s holding-to-account process will be withdrawn from the UK’.

Without the Charter the UK Government could also lower the standards it applies to its obligations under the European Convention on Human Rights.

In this context it was suggested that rights contained in provisions of the EU Charter of Fundamental Rights for disabled people which have equivalent UN treaty rights, should be brought into Scottish law where possible.

The UK and devolved governments have not directly incorporated the UN Convention on the Rights of Disabled People (UNCRPD) into domestic law. Instead, a number of UNCRPD rights are given at least partial effect through the Equality Act 2010, the Human Rights Act 1998, and a mixture of legislation, policies and programmes. There is currently no explicit requirement for UK and Scottish Ministers to give ‘due regard’ to the UNCRPD when developing new policy and law.

It was suggested that the EU as a body has fewer and less-limiting reservations and declarations around the interpretation of the UNCRPD than the UK – meaning that the UNCRPD may have less of an impact in the UK after
4. Summary of the discussion

Brexit if it is not embedded in domestic law.

Disabled People’s Organisations, human rights and civil society organisations should use the opportunity provided by Brexit to urge the Scottish Government to explore the possibility of incorporating the UNCRPD in domestic legislation within Scotland’s constitutional framework.

In addition Disabled People’s Organisations should work with human rights organisations, such as Amnesty and Liberty who are calling for non-regression or equality clauses within the European Withdrawal Bill.

It was also felt that it was important for Scottish Disabled People’s Organisations, human rights and civil society organisations to lobby the UK Government to ensure that the UK does not withdraw from the Council of Europe and the European Convention on Human Rights (ECHR) post Brexit.

Theresa May, who as Home Secretary argued for Britain to withdraw from the European Convention on Human Rights, has backtracked from this position as Prime Minister but some members of the group felt this U-turn may only be temporary – ‘She has just postponed this option until after Brexit’ and that pressure needs to be applied in this area by UK parliamentarians so as to protect the mechanisms that currently allow disabled people to seek individual redress for an infringement of their rights. To these ends, disabled people need to be connecting with their MPs and others to influence the focus on disabled people’s rights and Brexit at UK level.

‘Disabled people want to have their rights not be dependent on the whims of political agendas.’

Funding

There was considerable concern about the future of the European Union’s (EU) Structural and Investment Funds.

The financial risks, and the potential impact of this on disabled people and their rights, are likely to be significant, if these funds are not replaced beyond 2020.

For the period from 2014 to 2020, Scotland secured a total investment in European Structural Funds of €941m across the European Regional Development Fund and the European Social Fund³. This loss will impact particularly on the provision of employability support and skills training to disabled people.

4. Summary of the discussion

Under the Social Fund element of the EU Structural and Investment Funds, Disabled People’s Organisations in the UK have had the opportunity to apply for significant amounts of money for projects furthering disability equality and inclusion. According to the Academic Network of European Disability Experts, 19% of EU Structural Funds grants are spent on projects that directly support disabled people4.

The European Regional Development Funds have also enabled organisations to apply for significant amounts of EU funding to spend on projects which enhance disability equality and inclusion.

‘Disability has a particular relevance to the way the regional funds are spent, because disability considerations are embedded in how the funds are spent and accessibility is included in one of the preconditions for how the money is spent even if not under disability specific projects.’

‘We are very concerned because the UK Government is not giving any indication as to what the future replacement funding is going to be after 2020.’

It was seen as imperative that Disabled People’s Organisations and third sector organisations lobby the UK Government where possible to ensure replacement funding for organisations and projects in Scotland that support disabled people.

It was also suggested that there may be an opportunity to call for a more accessible applications process for this replacement funding.

‘What we have looked at is the potential redesign of the structural funds which for a lot of organisations are extremely difficult to access and to understand and over the years we have seen… fewer and fewer charities and third sector organisations accessing those funds because of the additional barriers that have been put in their way. It could be that in the new fund there is an opportunity there to redesign something to improve accessibility.’

4. Summary of the discussion

Accessible information

There was common concern that disabled people, particularly those with learning disabilities, were unable to engage in the discourse around Brexit because of the lack of accessible information available about the process and implications of the UK leaving the EU.

‘A very real barrier for people with learning disabilities, is the lack of accessible information. This was seen in the lead-up to the referendum and it still continues.’

There is a need for the UK and Scottish Governments to provide information about Brexit in accessible formats.

‘I think in order to engage people in the discussion around Brexit, people have to understand what we are leaving and what we are not leaving and what is staying and what is not. I think at the moment it’s very unclear.’

Freedom of movement

It was explained that disabled people were not going to lose a right to full freedom of movement in the EU as many do not enjoy an unqualified right in this regard at present. Disabled people have never had full freedom of movement in the EU as their right to live and work in an EU country is dependent on whether they are considered an ‘unreasonable burden’ in relation to their need for additional support. The chair was aware of a number of cases where disabled people have been extradited back to the UK from other member states because they required financial support in the form of social care.

Health and social care

Key concerns were the likely impact of restrictions of freedom of movement to the health and social care sector; the ability of disabled people to recruit personal assistants and the potential for delays with approval of new medicines if Britain leaves the European Medicines Agency.

The EU’s policy of freedom of movement and mutual recognition of professional qualifications within the EU has allowed many health and social care professionals from other EU countries to work in the UK. In 2016 this included 55,000 of the NHS’s 1.3 million workforce and 80,000 of the 1.3 million workers in the adult social care sector in the UK. The health and social work sector in Scotland employs 12,000 EU nationals, accounting for 3% of total employment in this sector.

The number of non-British EU nationals

6 SPICe Financial Scrutiny Unit Briefing:
4. Summary of the discussion

Working in the UK’s crisis-stricken social care system has shot up by more than 40 per cent in three years – prompting fears that Brexit will lead to a catastrophic staffing crisis across the sector.

Disabled people have a higher than average need to access healthcare in Scotland, and social care support is fundamental to independent living. There were 59,780 people in Scotland receiving Home Care services in March 2016 and 7,530 receiving direct payments for social care.

Among the most pressing concerns is that changes to immigration laws are likely to impact on personal assistance, with the loss of carers from EU countries potentially seeing disabled people “slide back” into depending on institutions and unable to live independently at home.

There was a suggestion that if Brexit led to significant restriction of this workforce that Scotland could take a different path and provide exemptions for health and social care workers.

There was general consensus that at present the debate around freedom of movement is not nuanced towards addressing the concerns of disabled people.

‘The implications of freedom of movement particularly to the social care workforce and disabled people’s ability to recruit PAs, these issues don’t seem to be at forefront of the debate around freedom of movement.’

The impact of the loss of the EU workforce on disabled people’s independence must become part of the debate on freedom of movement – alongside the importance of staff in health and social care more broadly.

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EU nationals living in Scotland 2016


4. Summary of the discussion

There was a feeling that Disabled People’s Organisations, organisations for disabled people, carers groups, women’s groups, social care providers and wider civil society organisations needed to come together to devise a shared ambition for health and social care post-Brexit and frame demands around freedom of movement, immigration and reciprocal agreements to ensure the sustainability of health and social care in Scotland.

‘We have an opportunity to think about how, as a country, we’ll tackle social care and potentially look of professionalisation of the care service and what do we want our care sector to look like and how it should function to the benefit of all disabled people.’

**Housing**

Concerns were raised about the impact of Brexit on the provision of accessible and adapted housing. There is a chronic shortage of accessible and adapted housing in Scotland. 60,000 disabled people in Scotland can’t get up or down the stairs inside their home and 30,000 households include someone who has great difficulty using the bathroom or toilet\(^{10}\). 1 in 4 wheelchair users say that their home is not meeting their needs\(^{11}\). It is also estimated by the London School of Economics that 59% of disabled people who are over 65 in the UK will need an accessible home in the next five years\(^{12}\).

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10 Scottish House Condition Survey 2015, ad-hoc request
12 LSE (2016) No Place like an Accessible Home.
4. Summary of the discussion

In 20 years’ time in Scotland there will be:

- 256,000 more households headed by someone aged over 65, and of these,
- 123,000 more households headed by someone over 85\(^{13}\).

75% of these households are currently living in homes which are not readily adaptable for their needs as they age and certainly not if they become wheelchair users – and statistically around 10% of the over-65s and 25% of the over-85s will use a wheelchair at least part of the time.

There is concern that the slow rate of house-building across the UK is likely to become even slower since the result of the referendum, as shares in house-builders have slumped badly and questions are being raised around the recruitment of skilled workers. It is not clear how the housing sector in Scotland will be impacted by planned restrictions on the free movement of people post-Brexit. It is widely acknowledged that a large number of construction workers are EU migrants and any restrictions on their rights to work or restrictions on developers bringing in migrant workers from EU countries, could make the process of housebuilding in Scotland less efficient.

In a recent survey of its members the Scottish Federation of Housing Associations found that a majority (80%) of respondents were concerned about Brexit, with the key concerns being ongoing uncertainty and the impact on financial markets and private finance, the possible impact of Brexit on the construction and workforce supply chain, and a likely increase in build costs\(^{14}\).

This raises the question of how the Scottish Government will effectively tackle the shortage of accessible housing post-Brexit.

13 Scotland’s People Annual Report: Results from the 2016 Scottish Household Survey.
5. Next Steps

We want to ‘bank and build’, that is to raise awareness of the likely impact of Brexit for disabled people and their organisations, and what needs to be done to secure our rights to independent living. There is a critical need to work with others who have influence or who have a stake in these areas, from the start. The aim of the think tank and the subsequent report is to help stimulate this and provide a focus for it.

The importance of clearly articulating disabled people’s key concerns about Brexit and providing a manifesto or statement of principles to Scottish Ministers and the UK Government in Scotland was considered to be the next step.

Inclusion Scotland’s ILiS project will work with key stakeholders to help progress this action and the other solutions suggested and it is hoped that this report will also inspire others to act together towards change.
### Appendix 1: List of participants

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<th>Name</th>
<th>Affiliation</th>
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<tr>
<td>Zara Todd (chair)</td>
<td>European Network on Independent Living</td>
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<tr>
<td>Donnie Jack</td>
<td>Scottish Government</td>
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<tr>
<td>Florence Garabedian</td>
<td>Lothian Centre for Inclusive Living</td>
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<tr>
<td>Caroline Kingston</td>
<td>People First Scotland</td>
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<tr>
<td>Idem Lewis</td>
<td>People First Scotland</td>
</tr>
<tr>
<td>Professor Anna Lawson</td>
<td>Centre for Disability Studies, University of Leeds</td>
</tr>
<tr>
<td>Dr Julie McElroy</td>
<td>International Public Policy Institute, University of Strathclyde</td>
</tr>
<tr>
<td>David Wilson</td>
<td>International Public Policy Institute, University of Strathclyde</td>
</tr>
<tr>
<td>Linda Bamford</td>
<td>Mobility Access Committee</td>
</tr>
<tr>
<td>Iain Smith</td>
<td>Inclusion Scotland</td>
</tr>
<tr>
<td>Isla McIntosh</td>
<td>Glasgow Disability Alliance</td>
</tr>
<tr>
<td>Joan McAlpine MSP</td>
<td>Member of the Scottish Parliament</td>
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<tr>
<td>Craig Wilson</td>
<td>Scottish Council for Voluntary Organisations</td>
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<tr>
<td>Susan Webster</td>
<td>Motor Neurone Disease</td>
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<tr>
<td>Craig Dalzell</td>
<td>Common Weal</td>
</tr>
<tr>
<td>Nora Uhrig</td>
<td>Equality and Human Rights Commission</td>
</tr>
<tr>
<td>Heather Fisken ILiS</td>
<td>Independent Living in Scotland</td>
</tr>
<tr>
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The Solutions Series

The Solutions Series aims to support meaningful, focussed and strategic-level discussion across a range of perspectives by hosting subject-specific pop up think tanks and reporting on these. Participants are targeted for their expertise and their sphere of influence and capacity to represent their community of interest or sector. They are asked to come up with some of the potential solutions – including cross-sectoral responses to and suggestions for policy, practise, research and legislative change – to sometimes quite contentious issues that create barriers to the realisation of independent living for disabled people in Scotland.

Independent Living means ‘disabled people having the same freedom, control, dignity and control as other citizens at home, at work and in the community. It does not mean living by yourself or fending for yourself. It means the rights to practical assistance and support to participate in society and live an ordinary life.’ This is the definition of independent living developed by disabled people.

We are grateful for the support of the University of Strathclyde’s International Public Policy Institute in the production of this briefing and staging the Solutions Series think tank.

Inclusion Scotland is funded by the Scottish Government.
Appendix 2: Briefing for the think tank

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1. Introduction

The UK is leaving the European Union (EU). What does this really mean for disabled people in Scotland?

Are disabled people, their organisations and their supporters in Scotland aware of the possible implications? And is there anything that can be done to ensure disabled people in Scotland’s rights and services remain not just protected but enhanced, in a post-Brexit Scotland?

2. About this briefing

This briefing presents our understanding of some of the key issues relating to this subject at the time of writing. We recognise that this is subject to change and that the briefing is not inclusive of all the possible issues.

This briefing offers background to these key areas and tries to paint a picture of what impact they might have for disabled people on Brexit. Each section ends with suggested Questions that the Think Tank might try to consider and answer in coming up with the solutions to Plotting a course for disabled people’s rights in the context of Brexit. However, the discussion should not limit itself to these suggested questions if it is helpful not to.

For ease, only one acronym has been used throughout this briefing: EU to denote the European Union.

3. Why this event: Plotting a course?

Despite the potential for significant consequences for disabled people, during the run-up to the referendum almost nothing was made publicly available about the possible impact of the vote on the 1 and 5 people in Scotland who are disabled.

There is a need for Disabled People’s Organisations in Scotland to work together with others to plot a course towards protecting and promoting our rights now and in the future as they are affected by Brexit. Not to do so fails to recognise the risks that Brexit brings for individual disabled people, their families and communities, and the social, economic, cultural and political life of Scotland.
Appendix 2: Briefing for the think tank

Plotting a course: Brexit and disabled people’s rights in Scotland aims to provide a first opportunity for disabled people and their organisations, alongside strategic decision-makers, informed professionals, sectoral experts and those with positions of influence, to do just this; discuss and debate Brexit and develop the solutions for how to defend and promote the right to independent living in the pre and post-Brexit era. It is important that we create a vision of disability rights beyond Brexit, and how this can be achieved.

This event will highlight concerns with transparency, scrutiny and accountability in the Brexit process, whilst taking a look at the broad sweep of policies and legislation likely to be impacted and what this means for disabled people’s rights. It will also provide an opportunity to propose positive steps forward for how these challenges and opportunities can be addressed by disabled people and their organisations and what needs to be in place to support that to happen.

4. Following this event: The Report

We want to ‘bank and build’, that is to raise awareness of the likely impact of Brexit for disabled people and their organisations, and what needs to be done to secure our rights to independent living. There is a critical need to work with others who have influence or who have a stake in these areas, from the start. The aim of the think tank and the subsequent report is to help stimulate this and provide a focus for it.

The report of the discussion will include any solutions identified at the think tank and map out those areas that might be threatened by Brexit, or where there are potential opportunities. The Independent Living in Scotland team, part of Inclusion Scotland, will work to position these solutions with those with decision-making roles, and with those who can influence them including disabled people and their organisations and supporters.
Appendix 2: Briefing for the think tank

5. What disabled people say

In 2016 the Papworth Trust undertook a web-based open survey which attracted 2036 respondents from disabled people and ‘disability workers’. Disabled people appeared more likely to favour leaving the EU (54% to 42%, with 4% unprepared to say) than the overall UK population (who voted 52% to 48% in favour of leave)\(^1\). Whilst the survey is not based on a random or representative sample, this apparent greater desire to leave might reflect the age profile, greater likelihood of poverty and of having low or no qualifications amongst disabled people, all factors to some degree associated with favouring leaving the EU – although these associations are not straightforward\(^2\).

Nonetheless, disabled people and their organisations have already identified significant concerns about the short and long term impacts of the decision to leave the EU and about the policies of the UK government during the management of the transitional and post-exit periods.

Baroness Jane Campbell\(^3\), Baroness Rosalind Scott\(^4\), Lord Colin Low\(^5\), Disability Rights UK\(^6\), European Network for Independent Living (ENIL)\(^7\) and the European Disability Forum (EDF)\(^8\) have all been involved in recent activity to alert disabled people and their organisations to the implications of Brexit to independent living. Building on the suggestions of Baroness Jane Campbell they have called for the need for Disabled People’s Organisations across the UK to:

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4. https://hansard.parliament.uk/Lords/2017-02-02/debates/BF5C6387-2D05-403D-A0E8-ABB6BA4E4DF6/BrexitDisabledPeople
5. https://www.disabilitynewsservice.com/brexit-would-have-dire-consequences-for-disabled-people/
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• Make sure that UK Parliamentarians (in both houses), and in the Scottish Parliament, understand what impact Brexit will have on disabled people, including on devolved issues

• Work in partnership to provide close scrutiny of The European Union (Withdrawal) Bill which will create a new distinct body of law known as “retained EU law”. It will give the UK Government (i.e. Ministers) broadly-framed delegated powers to alter any laws retained and give instructions to the courts on how to interpret them, without recourse to parliamentary scrutiny.

• Work in partnership to ensure that the rights we have, which originate from EU law, keep up with future changes made by the EU, and that they are not diminished, ‘frozen in time’ or indeed withdrawn altogether.

6. What others say

Although the picture in relation to future rights-enhancing law is unclear at times, civil society organisations across the UK are beginning to derive a ‘roadmap’ for a ‘fair Brexit’. Disabled People’s Organisations need to be a driving force within this movement.

Scottish Council for Voluntary Organisations are currently drafting a declaration on human rights⁹ that they are optimistic will win the support of many of Scotland’s civil society organisations.

The Equalities and Human Rights Commission has also recognised that Brexit presents a real opportunity for UK and Scottish Parliaments to take progressive action to improve the human rights framework post-Brexit and ensure that the backstops—the protection that the EU provides—will be not just maintained but added to, developed and built on.

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To this end, the Commission has created a positive vision for equality and human rights in Britain and has urged UK political parties to pursue five priorities to protect and promote equality and human rights in the UK. The vision suggests measures that would maintain and improve the human rights framework in the UK that could benefit disabled people. Disability Rights UK (DRUK), in their Manifesto for disability rights in a post-EU UK has built on this approach.

There is an opportunity for disabled people and their organisations to frame demands to those involved and influential in Brexit negotiations and to come around a common cause with other civil society organisations to make the case for democratic accountability and a collective aspiration for a high standards Scotland.

As Disability Rights UK makes clear: ‘Bringing the sector together to influence effectively on this agenda could be a game changer in terms of increasing knowledge and confidence in promoting legal rights amongst disabled people and our organisations; and in terms of changing the terms of the debate on Brexit and the decisions that flow from that debate.’

Questions

Q1. What is the vision for disabled people’s rights and the access to these rights, post-Brexit?

Q2. What is needed for disabled people and their organisations and allies to understand and engage in pre- and post-Brexit?

10 Disability Rights UK (2017) The implications of Brexit for disability rights
11 Ibid
7. Key Issues

Section 7.1 and 7.2 look at the human rights and equalities legislation and conventions etc. Other sections look at specific duties and themes such as transport and employment.

7.1. Laws, charters and conventions – what’s changing?

7.1.1. EU law and its role in domestic equalities legislation

EU law is currently an important source of equality and human rights law for Member States. Withdrawing from the EU means the UK no longer has to comply with the human rights obligations of the EU Treaties. It also means that the EU Court of Justice will no longer have any jurisdiction over the UK. This marks a seismic change in the British judicial system.

In terms of human rights post-Brexit, disabled people and their organisations in Scotland find ourselves seeking to ensure there is no regression in current equality and human rights protections; that Scotland should not be left behind future EU and European Court of Human Rights progressive developments.

Many disability-related rights in EU law will already be embedded in domestic UK legislation, such as the Equality Act 2010. However, disability-related rights are also created by EU laws (such as regulations) which are ‘directly applicable’ in the UK but which do not currently appear on the UK statute books. Important examples of this are the various EU passenger rights regulations which govern matters such as the accessibility of vehicles and assistance for disabled passengers whilst on board. We need to have clear sight of the rights which EU law makes part of UK law, even though they do not appear explicitly in UK legislation.

Conversely, we should explore where Brexit might open an opportunity to extend legislation that is on the UK statute.

7.1.2. European Union (Withdrawal) Bill

The UK Government intends to transpose EU law into domestic law through ‘The European Union (Withdrawal)’ Bill and subsequent ‘Brexit bills’.
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The European Union (Withdrawal) Bill is widely considered to be one of the largest, and most complex, pieces of legislation ever seen in the UK. The ramifications for civil society are evident. On the one hand the Bill may present an opportunity to improve some of our laws and to deliver better services and protection for disabled people, on the other the lack of time, scrutiny and understanding could lead to significant flaws.

The Bill gives the UK Government powers to amend, if certain conditions are met, all retained EU law, including that which has been implemented in the UK through primary legislation. One of the main powers, in clause 7, is designed to enable the Government to change retained EU law to ensure that it operates effectively outside the EU. The temporary power could also be used by the UK Government to change primary and secondary legislation that is not retained EU law so long as the purpose of the change is to fix a problem with the retained EU law\(^\text{12}\). The UK Government maintains that this is only if the purpose of the change is to resolve a ‘deficiency’ ‘it is not a power to change laws because the government did not like them before exit’\(^\text{13}\).

However there are significant concerns surrounding the use of Statutory Instruments within the bill and, so called, Henry VIII clauses to ‘correct’ EU laws to fit in with domestic law. The use of these powers – and the lack of scrutiny involved – could see rights for disabled people accidentally or intentionally weakened. Labour’s Hilary Benn, chair of the Brexit select committee, has previously suggested this could amount to a “blank legislative cheque”\(^\text{14}\), although the government has insisted the powers will only be used to make technical corrections to make the laws translatable.

These concerns have been heightened because of the number of times ministers have used delegated powers to make highly controversial changes, including the so-called rape clause requiring women who have been raped to provide verification of this if they wish to claim tax credits for more than two children\(^\text{15}\).

\(^{12}\) https://fullfact.org/europe/european-union-withdrawal-bill/
\(^{13}\) http://researchbriefings.files.parliament.uk/documents/CBP-8079/CBP-8079.pdf
\(^{14}\) http://www.bbc.co.uk/news/uk-politics-40868285
\(^{15}\) https://www.theguardian.com/politics/2017/aug/31/brexit-charities-join-forces-against-repeal-bill-power-grab-by-ministers
7.1.3. The EU Charter of Fundamental Rights

The EU Charter of Fundamental Rights brings together in a single text all the personal, civic, political, economic and social rights that people enjoy within the EU. Article 21 of the Charter prohibits discrimination on various grounds, including disability, and Article 26 recognises the right of disabled people to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

The Charter has been of value because it provides practical social rights to disabled people and because of the contribution it makes to the interpretation of a range of rights and consolidating them.

The Scottish Human Rights Commission is concerned that leaving the EU and withdrawing from the Charter ‘will mean that the EU’s holding-to-account process, which concerns its general expectations of the standards that countries are expected to meet, will be withdrawn from the UK’. The Commission believes this means that without the Charter of Fundamental Rights, the UK Government could lower the standards it applies to its obligations under the European Convention on Human Rights.

7.2. Laws, charters and conventions – what’s not changing?

7.2.1 The European Convention on Human Rights

Following on from the remarks by the Scottish Human Rights Commission, and for explanation, the European Convention on Human Rights promotes, protects and monitors the implementation of human rights for all, including disabled people. It is an instrument of the Council of Europe and signed up to by its 47 Member States. The implementation of the Convention in Member States is overseen by the European Court of Human Rights. The UK is not leaving the Council of Europe and will remain a signatory of the Convention and accountable to the European Court of Human Rights. The Council of Europe is entirely distinct from the EU, although the EU itself is a member state.

17 http://www.echr.coe.int/Documents/Convention_ENG.pdf
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In 2017 the Council of Europe developed a Disability Strategy ‘Human Rights; A reality for all’ (2017 to 2023)\(^\text{18}\). This sets out the priority areas for the Council and offers guidance on ‘policies, activities and measures to ensure implementation of priorities at national and local levels.’ This provided disabled people and their allies with a focus and a compass for national and local actions to drive home with decision-makers post-Brexit.

7.2.2. United Nations Committee on the Convention of the Rights of Disabled People

There is a further useful lever provided by the United Nations Committee that recently examined the work of UK and devolved governments’ progress in implementing disabled people’s human rights under the United Nations Convention on the Rights of Disabled People. Included within their conclusions and recommendations (August 2017) the Committee observed with concern:

‘The lack of information on policies, programmes and measures that will be put in place by the State party to protect persons with disabilities from being negatively affected, upon triggering article 50 of the Treaty on the European Union.’

It recommended that the UK Government needed to act immediately to ‘prevent any negative consequences for persons with disabilities by the decision of the triggering article 50 of the Treaty on European Union, in close consultation with organizations of persons with disabilities.’\(^\text{19}\)

7.2.3. The Scotland Act

The Scotland Act 1998 prevents the Scottish Government from passing laws that violate the European Convention on Human Rights. The Conservative Government had planned a British Bill of Rights, but Theresa May, who as Home Secretary argued for Britain to withdraw from the European Convention on Human Rights, has since backtracked from this position as Prime Minister and has said that she does not intend to withdraw from the Convention\(^\text{20}\). This U-turn could however be temporary.

\(^{18}\) https://rm.coe.int/16806c400c

\(^{19}\) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGBR%2fCO%2f1&Lang=en

However, in relation to disabled people, the benefit of the non-discrimination part of the EU Charter of Fundamental Rights is that a disabled person does not need to ‘attach’ another right when they make a discrimination claim in the way that they would have to under the European Convention on Human Rights.

Under the European Convention on Human Rights a disabled person would have to have a right-to-family-life claim, for example, to which they would then attach an anti-discrimination claim, whereas under the EU Charter of Fundamental Rights, that does not need to be done—a disabled person can make a case based on a claim for non-discrimination. We will lose that right as Brexit happens and the charter falls.

The Minister for Communities, Social Security and Equalities, Angela Constance MSP, announced in Parliament on 19th September 2017 that the Government is to establish an expert working group on how ‘Scotland can lead by example’ and in response to the possible erosion of those rights covered by the EU Charter21.

### 7.3. Our other rights

There are a wide range of other, more specific, rights and legal protections afforded to people with disabilities through membership of the EU which may cease to be applicable in the UK after exit day. These protections include:

- the European Union Employment Equality Directive which requires Member States to prohibit disability discrimination in employment;

- the European Union Air Passenger Rights Regulation (together with similar regulations on rail, ship and coach travel), which requires disabled people to be given assistance when travelling by plane in EU and European Economic Area (EEA) countries

- the European Union Medicinal Products for Human Use Directive which requires the packaging of medicinal products to include Braille labelling

- the European Union Public Procurement Directives which require public bodies to include accessibility in technical specifications

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- the Public Sector Websites and Mobile Applications Directive which requires public sector bodies to ensure that their websites and mobile apps comply with accessibility standards

This means that these, and other protections, may no longer serve disabled people who live in the UK or those travelling throughout the EU and other, potentially helpful, legislation planned for the EU will not come into force in the UK. An example of this is the European Accessibility Act, which will set “common accessibility requirements for certain key products and services”, but due to Brexit is unlikely to be adopted by the UK. This may likely apply to all future EU legislation, meaning that the rights of disabled people in Scotland and elsewhere in the UK may lag behind that of disabled citizens of EU Member States.

7.4 Justice – a course for rights

As the EU (Withdrawal) Bill states: “The charter of fundamental rights is not part of domestic law on or after exit day.”\(^{22}\), and so on Brexit, the UK will no longer fall under the jurisdiction of the European Court of Justice, which enforces the Charter (see 7.1.3, above).

From Brexit, UK courts and tribunals will no longer be able to refer cases to the European Court of Justice and that any decisions made by the Court, in relation to cases originating in (other) Member States, will not be binding in the UK. Any questions on the meaning of retained EU law will be determined by domestic courts in accordance with pre-exit case law\(^{23}\).

Over the past 20-30 years, without the European Court of Justice, we would not have had many of the more progressive decisions relating to disability equality\(^{24}\). For example judgements have led to increased sanctions and compensation for workplace discrimination, and the ruling that discrimination policy covers not just people who are disabled but also people who suffer discrimination because they are related or connected to a disabled person\(^{25}\).

\(^{22}\) http://researchbriefings.files.parliament.uk/documents/CBP-8079/CBP-8079.pdf
\(^{24}\) https://www.ft.com/content/a1ec120c-6307-11e7-91a7-502f7ee26895
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The loss of these principles and enforcement mechanisms could have a profound impact on the domestic protection and promotion of human rights for disabled people across the whole of the UK. If, in future, existing rights are diluted or removed by a future Government, or go unmet, disabled people will not be able to seek justice in the courts on the basis that such acts are contrary to EU law.

There is a concern that if the UK and Scottish Parliaments do not monitor the decisions of the European Court of Justice, and seek to incorporate progressive rights and decisions into domestic law, disabled people’s rights across the UK will either go backwards or not progress. They will in effect be ‘frozen in time’.

7.5 Employment

7.5.1. European law

One of the issues that dominated throughout the referendum campaign discourse was that of workers’ rights. It is true to say that the vast majority of UK employment law derives from EU law. In other words EU employment law provides a minimum standard below which domestic employment law must not fall.

In some cases EU law has entrenched, at an international level, provisions that already existed in domestic law: sex and race discrimination and certain maternity rights, for example. In others, the EU has essentially forced the UK government into accepting new categories of employment rights into UK law, often with considerable resistance from the UK Government. Areas where tensions have arisen in the most recent past, have included the EU’s desire for employment protections for agency workers and limitations on working time. In 1999 the UK accepted EU legislation in these areas by signing up to the Social Chapter.

Whilst it is impossible to presuppose what the terms of the negotiation of exit from the EU may mean for employment rights, it is true to say that UK employment rights currently guaranteed by EU law would no longer be so guaranteed. A post-Brexit government could seek to amend or remove any of these.
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The precise mechanism by which this could be achieved would vary depending on the individual employment right in question:

- some rights are enshrined in primary legislation, alterable only by primary legislation (e.g. discrimination law, codified in the Equality Act 2010) (see 7.5.2. below)

- some EU-derived rights are located in secondary legislation, and are therefore susceptible to revocation by secondary legislation

- some EU rights have direct effect, meaning that individuals can rely directly on EU law (for example the right to equal pay contained in the EU Treaty). These rights would automatically cease to apply on Brexit in the absence of any new domestic legislation recovering them, or new international obligation to maintain them.

The Government has indicated that it has no plans to remove any protections for disabled people in respect of worker’s rights26.

However, as a consequence of Brexit, the process by which a UK Government is eligible to remove them some time in the future, has just become much easier27. Secondary legislation can be changed or repealed by government much more easily than can primary legislation, for which a higher degree of parliamentary scrutiny is required. Whilst the UK remains in the EU, security (against the repeal of rights-conferring legislation) is provided by the need to comply with EU law – which would prevent the repeal of secondary legislation which includes rights recognised by EU law. However, after Brexit, that underpinning security will no longer exist – meaning that rights protected only in secondary legislation will be more vulnerable to removal or reduction by executive action than if they were set out in primary legislation.

26 https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech
7.5.2. Employment and the Equality Act

The Trades Union Congress (TUC) notes that EU law helped to defend most of the rights in the Equality Act when the Coalition Government floated the idea of scrapping it in 2010\(^\text{28}\).

However since the 2010 election there have been reforms of other employment law particularly in areas not covered by EU law, for example increasing the qualifying period for unfair dismissal from one to two years. When equality law no longer has to meet EU minimum standards, the government may consider some changes to restrict rights under the Equality Act.

One possible change would be to limit the amount of compensation that can be awarded under the Equality Act. At present there is a statutory limit on compensation for unfair dismissal. Suggestions to do the same for discrimination claims have been blocked by the argument that it would breach EU law.

If a cap on Equality Act compensation for workplace discrimination was introduced, it could mean a significant number of claimants no longer being compensated in full for the distress and financial loss they suffer due to unlawful discrimination in the workplace. That applies particularly to claimants who have suffered more serious distress or long-term financial damage (e.g. long-term mental illness restricting their employment prospects), particularly lower paid workers. It would also deny full compensation to those in high paid roles.

Questions

Q3. We have assurances from the UK government that worker’s rights will be maintained post-Brexit. How can we ensure that specific workplace protections for disabled workers are maintained and improved?

\(\text{28} \) https://www.samh.org.uk/about-us/news-and-blogs/brexit-and-scotlands-mental-health
7.6. Funding for Disabled People’s Organisations and disabled people

There is considerable concern, amongst Disabled People’s Organisations and organisations that support disabled people in Scotland about the future of the European Union’s (EU) Structural and Investment Funds.

The financial risks, and the potential impact of this on disabled people and their rights, is significant, if the funds are not replaced beyond 2020. The importance of this issue was noted by the UK Parliament’s Women and Equalities Committee, according to which:

“Witnesses noted the particular importance of the EU Structural Funds to equalities initiatives; some of this funding goes directly to equality projects and some is channelled through state bodies. Concerns have been raised about potential gaps in funding for equalities initiatives once the UK has left the EU.”29

For the period from 2014 to 2020, Scotland secured a total investment in European Structural Funds of €941m across the European Regional Development Fund and the European Social Fund30. This loss will impact particularly on the provision of employability support and skills training to disabled people.

Under the Social Fund element of the EU Structural and Investment Funds, disabled people’s organisations in the UK have had the opportunity to apply for significant amounts of money for projects furthering disability equality and inclusion. According to the Academic Network of European Disability Experts (see 7.9.1. below), 19% of EU Structural Funds grants are spent on projects that directly support disabled people31.

The European Regional Development Funds have also enabled organisations (including local authorities) to apply for significant amounts of EU funding to spend on projects which enhance disability equality and inclusion.

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29 The EU Referendum: Disability and the European Union’ June 2016 House of Commons Women and Equalities Committee
30 http://www.gov.scot/Topics/Business-Industry/support/17404 quoted in Brexit and disability rights by Disability Agenda Scotland
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While Britain remains a member of the EU funds already secured should continue to flow, but recipients will need to lobby strongly at national and European levels to make sure commitments are honoured. It will be progressively more difficult to apply for European Structural Funds funding as the moment of exit approaches. The terms of the final agreement with the EU will set out what, if any, access Britain has to structural funds after that point, but it is suggested by European partners that it is questionable that access can continue as at present.

During the referendum campaign, it was argued that EU programmes like these could be run more effectively by the UK government and that funds currently paid to the EU should be freed up for other UK priorities. The UK government can therefore expect to be advised to include programmes and organisations that support disabled people in their distribution of monies saved on Brexit.

Questions

Q4. Will the Scottish Government guarantee to restore in full the money presently coming from the European Structural and Infrastructure Funds that currently support schemes for disabled people and when can we expect clarity on this?

Q5. What measures will the UK Government take to ensure the economic viability of Disabled People’s Organisations reliant on EU funding and others whose funding will be squeezed if the post-Brexit funding environment becomes more competitive?
7.7 Health and social care

Health and social care are not areas of significant EU competence. However, leaving the EU could have a significant impact on health and social care across the UK nations. For many disabled people and their carers, a period of prolonged uncertainty awaits as decisions about the extent of free-movement for health and care workers from the EU, and other issues of health policy and medical regulation are subject to negotiations on the UK’s future relationship with the EU.

7.7.1 The workforce we need

The EU’s policy of freedom of movement and mutual recognition of professional qualifications within the EU has allowed many health and social care professionals from other EU countries to work in the UK. In 2016 this included 55,000 of the NHS’s 1.3 million workforce and 80,000 of the 1.3 million workers in the adult social care sector32. The number of non-British EU nationals working in the UK’s crisis-stricken social care system has shot up by more than 40 per cent in three years – prompting fears that Brexit will lead to a catastrophic staffing crisis across the sector.

Disabled people have a higher than average need to access healthcare in Scotland, and social care support is fundamental to independent living. There were 59,780 people in Scotland receiving Home Care services in March 2016 and 7,530 receiving direct payments for social care33.

Among the most pressing concerns, is that changes to immigration laws are likely to impact on personal assistance, with the loss of carers from EU countries seeing disabled people “slide back” into depending on institutions and unable to live independently at home34.

32 https://www.kingsfund.org.uk/publications/articles/brexit-and-nhs
33 http://www.gov.scot/Publications/2016/11/8311/335712
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At an event held by the European Disability Forum and the European Network on Independent Living in London to discuss the implications of Brexit a disabled activist explained that he had employed PAs from 15 different EU Member States over the last 34 years. He feared not being able to recruit replacements from the UK if it was no longer possible to do so from the EU:

‘I have been free from residential care for 34 years, employing my own PAs who support me to have full control of my life. They have come from 15 different EU countries. Without their support I could not do my work at home and abroad. If the Government does not make some kind of arrangement to protect our access to the EU PA workforce, I will lose my freedom again’

This suggests that the impact of the loss of the EU workforce on disabled people’s independence must become part of the debate on freedom of movement – alongside the importance of staff in health and social care more broadly.

7.7.2. Health and social care for visiting and living abroad

Disabled UK citizens working or living in the EU are currently entitled to access social and health care in the host country and receive the same treatment as nationals of that country. This has given many disabled people the confidence to live, work, study or travel abroad. Future restrictions on EU citizens using the NHS in the UK will inevitably lead to similar restrictions on UK nationals living in the EU accusing free health care.

At present, any disabled EU citizen who can demonstrate that they are either employed, or self-employed in the UK or non-active but ordinarily a resident in the UK, are entitled to free NHS treatment.

Reciprocal health care access will have to be negotiated in the terms of our exit from the EU. The EU Home Affairs Sub-Committee in the UK parliament launched an Inquiry into reciprocal healthcare after Brexit in September 2017 to look at healthcare entitlements, which are tied to social security benefits, for UK citizens travelling, living or working in the rest of the EU, and EU citizens in the UK.

36 Disability Rights UK (2017) report on the implications of Brexit for disabled people
37 Ibid
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It is imperative that immediate clarification is sought on the status of EU workers and the Scottish Government moves to understand how it will address skills and staff shortages if free movement of people is scrapped.

Questions

Q6. If free movement of labour between the UK and the EU were to be restricted, could an exemption for health and social care staff be agreed? If not, what do we do?

Q7. Will reciprocal agreements be set in place to allow continued access to social and health care for disabled UK citizens in the EU?

7.8. Social security and residence

7.8.1 Bilateral social security

Access to welfare is a key driver for disabled people when determining where to live and what employment opportunities are available to them. The UK government could act quickly in order to alleviate disabled people’s concerns by seeking to secure a bilateral social security agreement with every single EU or European Economic Area member state. This could, however, be difficult as change on a state-by-state basis could be extremely protracted, and result in overly-complex and divergent systems.

It is of course possible that bilateral agreements could closely resemble existing provisions in EU law, meaning a swifter agreement could be reached. Whatever the solution, decisions would have to be made on how to protect social security rights already accrued at the point of withdrawal from the EU.

However, looking at the experience of the bilateral agreements that the UK has negotiated with other countries beyond the EU, it is clear that they are far more limited in scope and it is difficult to see how a disabled or older person living and working in an EU-member state would fare under similar arrangements.

It has never been the case that EU law makes it mandatory for any EU or European Economic Area migrant to have unrestricted access to social security. This has always been at the discretion of each individual state. Broadly speaking,
however, working EU or European Economic Area migrants are entitled to in-work benefits on the same basis as nationals of the host country. This could change after Brexit, meaning a disabled UK citizen working in an EU or European Economic Area member state, may no longer qualify for welfare support. And vice versa for disabled EU citizens in the UK.

7.8.2. Settlement 2016 and implications

The Settlement for the United Kingdom within the European Union agreed at the European Council meeting in February 2016 included proposals to change EU law to provide an ‘emergency brake’. This means that Member States could limit full access to in-work benefits by newly arrived EU migrants for a period up to 4 years after they arrive. The Council agreed that the UK could invoke this straight away. There was also an option for Member States to index exported child benefits to the conditions of the Member State where the child resides.

With the UK voting to leave the EU, the Settlement has lapsed and the changes to EU law will not now be made.

Disabled people need to be conscious that until such time as the UK formally leaves the EU, the existing social security rules continue to apply. We will not be able to fully understand the changes to social security entitlements in EU and European Economic Area until the Brexit negotiations have concluded.

One of the drivers for Brexit was an end or curtailment of free movement to the UK from the EU and European Economic Area. This will very likely change the entitlement of UK disabled people who are currently living abroad, or thinking of moving abroad. This could result in significant numbers seeking repatriation to the UK, placing additional pressures on our social care system, our NHS and on local authorities and housing supply.

UK withdrawal from the EU would also mean withdrawal from the long-standing provisions in EU law to co-ordinate social security schemes for people moving within the EU. These rules have acted as a positive protection for disabled people who have sought residency in other EU or European Economic Area Member States.

There are also concerns that disabled people from other countries in the
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European Economic Area who have been living in the UK for five years or more might well experience difficulty in establishing self-sufficiency in order to obtain permanent residence.

Similar worries and uncertainties will undoubtedly affect disabled people from the UK who are currently living in other European Economic Area countries. The concerns stem, in part, from conditions laid down in EU law on the residence rights of European Economic Area citizens which appear to operate to the disadvantage of many disabled people – an issue with implications beyond Brexit.

As DRUK have made clear efforts should be made to highlight this to government and campaign for disabled people not to be exposed to any indirect discrimination as regards citizenship and opportunities to continue living in the UK after Brexit.

Questions.

Q8. How can the UK Government reassure disabled people living and working in the EU that their entitlements to social security will be protected?

Q9. How can Disabled People’s Organisations act to ensure that tests for permanent residency do not discriminate against disabled EEA nationals?

7.9. Education and research

The impact of Brexit on Higher Education is expected to be keenly felt. Many of the UK’s leading academics have expressed concerns about what Brexit would mean for research and development in the UK.

For disabled people this will also have an impact, both in terms of disabled students’ access to higher education in EU European Economic Area Member States and to the research that supports a better understanding of disabled people’s lived experience.

As a member of the EU, UK students have access to European student mobility schemes such as Erasmus+. Furthermore, the UK is a signatory to the Bologna Process which aims to create a harmonised Higher Education system across Europe. It is unclear if we will still have access to either of these schemes post-Brexit.
7.9.1. Academic Network of European Disability Experts (ANED)

In terms of implications for disability research the European Research Area was launched by the European Commission in 2000 with the aim of co-ordinating research and innovation activities across the EU. One of the most significant bodies to subsequently be created was the Academic Network of European Disability Experts.

The Network was established in 2007 by the European Commission. It maintains a pan-European academic network within the field of disability to support policy development in collaboration with the Commission’s Disability Unit. Its philosophy and aims support the objectives of European disability policy towards the goal of full inclusion.

It builds upon the expertise of existing disability research centres and national networks, supported by contacts in each country, expert rapporteurs on specific themes, and links to other policy and research networks. In this way, it provides a co-ordinating infrastructure of academic support for practical implementation of the European Disability Strategy and the UN Convention on the Rights of Disabled People.

Through their research the Academic Network of European Disability Experts maps and monitors existing EU laws and policies as well as the national disability policies of 35 EU Member States, Candidate and Associated Countries. Each year, they assess evidence relevant to progress on the EU2020 Strategy from a disability perspective.

Questions

Q10. How will Brexit impact on disabled students’ access to higher education in EU Member States?

Q11. What measures could the Scottish Government take to ensure that Scottish research and civil society organisations can maintain international links that are vital for ensuring strong equality protections for disabled people?
7.10. Transport

The main UK legislation in relation to accessibility and modes of transport is now consolidated in the Equality Act 2010 (see 7.1. above) and, as before, a lot of the law which relates to the treatment of disabled passengers and the services they can expect originates from the EU instruments. EU directives such as the air passengers’ regulation, which provides assistance for disabled passengers travelling in the EU, and other similar rules for travel by train, ship and bus, have established the rights of disabled people to independent travel in Europe, and the duties owed to them. These include requirements relating to assistance and non-discrimination, as well as technical design and accessibility. Their effectiveness depends on reciprocity and consistency.

The extent to which their smooth continuance for UK travellers is put at risk by Brexit is unclear. Explicit attention should be given to this issue in the negotiations to ensure that disabled passengers continue to be able to travel safely and on an equal basis with others.

In 1998, EU Member States agreed to recognise Blue Badge permits (parking permits for disabled drivers) of a common format issued in EU countries. It is not likely that Brexit would lead to the UK changing the format of the Blue Badge, so there is no obvious reason why it would not continue to be recognised across Europe, in the same way as those issued in Switzerland and Norway.

Questions

Q12. What can be done to guarantee that arrangements concerning accessibility and modes of transport will continue post-Brexit?

Q13. Will the UK government seek to reassure disabled people that the blue scheme will operate unchanged after Brexit?
7.11. The European Accessibility Act

The European Accessibility Act aims to improve the functioning of the internal market for accessible products and services by removing barriers created by divergent legislation. The Accessibility Act will establish European-wide functional requirements. This means requirements establishing accessibility principles instead of prescribing the detailed technical solutions.

The European Accessibility Act will cover the following products and services:

- computers and operating systems
- ATMs, ticketing and check-in machines
- telephones and smartphones
- TV equipment related to digital television services
- telephony services and related equipment
- audio-visual media services, such as television broadcast and related consumer equipment
- services related to air, bus, rail and waterborne passenger transport
- banking services
- e-books

The Act was announced by the Commission in January 2011 and scheduled for adoption by the end of 2012 but has been repeatedly postponed. The Commission finally adopted a proposal for an Act in December 2015. The Internal Market and Consumer Protection Committee considered 673 amendments to the proposal and adopted its report on the Act in April 2015.
Appendix 2: Briefing for the think tank

Once the council has agreed its position, the usual trilogue negotiations can be launched as the next step in the legislative process. (Note: a trilogue negotiations are a set of informal negotiations between the European Parliament, the Council of the European Union and the European Commission to reach agreement on legislation).

Brexit is likely to coincide with adoption of this important Act so there is concern is that disabled people in the UK will not benefit from this legislation.

Questions

Q14. What needs to be done to ensure that disabled people in the UK can benefit from the internal market for accessible products and services?
Annex 1. List of Questions

The following questions are copied from the body of the text.

Q1. What is the vision for disabled people’s rights and the access to these rights, post-Brexit?

Q2. What is needed for disabled people and their organisations and allies to understand and engage in pre- and post-Brexit?

Q3. We have assurances from the UK government that worker’s rights will be maintained post-Brexit. How can we ensure that specific workplace protections for disabled workers are maintained and improved?

Q4. Will the Scottish Government guarantee to restore in full the money presently coming from the European Structural and Infrastructure Funds that currently support schemes for disabled people and when can we expect clarity on this?

Q5. What measures will the UK Government take to ensure the economic viability of Disabled People’s Organisations reliant on EU funding and others whose funding will be squeezed if the post-Brexit funding environment becomes more competitive?

Q6. If free movement of labour between the UK and the EU were to be restricted, could an exemption for health and social care staff be agreed? If not, what do we do?

Q7. Will reciprocal agreements be set in place to allow continued access to social and health care for disabled UK citizens in the EU?

Q8. How can the UK Government reassure disabled people living and working in the EU that their entitlements to social security will be protected?

Q9. How can Disabled People’s Organisations act to ensure that tests for permanent residency do not discriminate against disabled EEA nationals?
Appendix 2: Briefing for the think tank

Q10. How will Brexit impact on disabled students’ access to higher education in EU Member States?

Q11. What measures could the Scottish Government take to ensure that Scottish research and civil society organisations can maintain international links that are vital for ensuring strong equality protections for disabled people?

Q12. What can be done to guarantee that arrangements concerning accessibility and modes of transport will continue post-Brexit?

Q13. Will the UK government seek to reassure disabled people that the blue scheme will operate unchanged after Brexit?

Q14. What needs to be done to ensure that disabled people in the UK can benefit from the internal market for accessible products and services?