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**Inclusion Scotland Response Questionnaire:**

**Convention on the Rights of Persons with Disabilities**

**Article 5 - equality and non-discrimination**

1. *Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.*

1.1 Yes. The United Kingdom first adopted legislation prohibiting discrimination against disabled people in employment or in the provision of a service in the Disability Discrimination Act 1995. This legislation has since been superseded by the Equality Act 2010. Reasonable adjustments are a key part of the Equality Act 2010 (EA).

1.2 The Equality Act requires reasonable adjustments (accommodations) should be made to ensure that a disabled person can access the following areas of life:

* education
* employment
* housing
* goods and services like shops, banks, cinemas, hospitals, council offices, leisure centres
* associations and private clubs like the Scouts and Guides, private golf clubs and working men clubs.

1.3 The Equality Act also puts employers under an obligation to make reasonable adjustments in relation to the following:

1. Provisions, criteria or practices, including company policies  
2. Physical features, such as the layout of and access to workplaces  
3. Provision of auxiliary aids, including providing information in an accessible format such as Braille, large print or email.

1.4 Where any of the above place a disabled person ‘at a substantial disadvantage’ the employer has to take any steps that are ‘reasonable in all the circumstances’ to prevent that disadvantage occurring.

1. *Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements (500 words).*

2.1 The objective test applied by the courts is that the adjustment (accommodation) is reasonable in all the circumstances. In determining whether the adjustment/ accommodation is reasonable the following factors are taken into account –

* how practicable the changes are
* if the change asked for would overcome the disadvantage that a disabled person or people were experiencing
* the size of the organisation
* how much money and resources were available
* the cost of making the changes
* if any changes have already been made.

2.2 Thus a small employer or service provider would not be expected to spend large amounts of money to make an adjustment. However a larger enterprise or employer such as the Government or a multi-national company would be expected to spend far more and make larger adjustments.

2.3 Special provisions apply to transport which have been staggered to allow bus & coach companies and taxi firms to replace their inaccessible vehicles with accessible ones.

2.4 Rail transport vehicles were originally required to be accessible by 2020 -but with the adoption of European Directive 2008/164/EC, that was brought forward to 2008. Subsequently Light Rail Vehicles such as Trams were brought within the scope of the legislation and have until Jan. 2020 to become fully accessible.

2.5 Under Public service vehicles accessibility regulations 2000 (SI 2000/1970) (PSVAR), as amended, all buses must be accessible by 1 January 2017 and all coaches by 1 January 2020. Although buses must be accessible and have a wheelchair space the law is unclear if the space needs to be vacated if it is already occupied by another passenger. Recent court decisions seem to indicate that there is no requirement for the bus companies to ensure that the space is vacated if a wheelchair user needs it, considerably reducing disabled people’s rights to access public transport.

2.6 Section 36 of the original Disability Discrimination Act (1995) which placed extensive duties on taxis to be accessible and for taxi drivers to provide assistance to disabled people has never been enacted. However the UK Government has announced recently that they intend to enact these provisions shortly – some 20 plus years after the passage of the original legislation.

1. *Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced (500 words).*

3.1 Positive (or affirmative) actions are permitted under the Equality Act although positive discrimination is not. Positive action allows an employer to take steps to encourage people from an under - represented group (such as disabled people but also women or black or minority ethnic people) to take advantage of opportunities for employment. Taking such steps is subject to certain conditions, including having the objective to reduce the under-representation of disabled people in the employer’s workforce. The steps can include measures to encourage or train disabled people to apply for jobs.

3.2 [Specific provisions on positive action](http://www.xperthr.co.uk/employment-law-manual/attracting-suitable-candidates/20340/?cmpid=ILC|PROF|HRPIO-2013-110-XHR_free_content_links|ptod_article&sfid=701w0000000uNMa#positive-action-in-recruitment-and-promotion-specific-provisions) allow employers to select an applicant for recruitment or promotion from an under-represented group, in favour of another applicant who is not from that group but only if both applicants are “as qualified as” each other. In other words, where there is a tie between two candidates in a recruitment or promotion round, and one of the candidates is a disabled person the employer can use the positive action provisions to appoint the candidate from the under-represented group.

3.3 However although positive action is permitted it is not required. This means that it is extremely difficult to detail which employers are, or are not, taking positive action. In the last few years the Scottish Government has taken some positive action in relation to funding Intern schemes in the Voluntary Sector, in the Scottish Parliament and with the main Scottish political parties.

3.4 The latter two initiatives were designed to increase disabled people’s participation and influence over political life. Similarly the Scottish Government have provided a Democratic Participation Fund of £153,000 (approx. 195,000 Euros) to pay for the extra access costs incurred by disabled people who stand as candidates for local government in next year’s local authority elections. We are certain that these are not the only examples just the ones that we are most aware of.

1. *Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please describe how these policies are reflected in legislation and policy frameworks (500 words).*

4.1 The Equality Act 2010 protects disabled children, young people and adults against discrimination, harassment and victimisation in relation to housing, education, clubs, the provision of services and employment.

4.2 However young disabled people aged under18 are only protected against age discrimination in relation to work, although they have protection against discrimination based on their disability in all the other areas regardless of age.

4.3 Disabled women are protected against discrimination on the grounds of either their gender or age. However discrimination based on a combination of characteristics, such asbeing both disabled AND a woman is not actionable in law. Discrimination based on a combination of protected characteristics was originally going to be outlawed in the 2010 Equality Act but this proposal was then dropped.

1. *Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?*

5.1 The Equality Act places both an over-arching general duty (to promote equality) and specific duties (different specific duties exist in each of the four nations that make up the United Kingdom – England, Scotland, Wales and Northern Ireland) on public authorities to gather and use evidence in making their policy decisions. In Scotland public authorities such as Local Authorities, the National Health Service and the Scottish Government itself are specifically required to gather information on:

* the composition of the authority’s workforce (if any), and
* the recruitment, development and retention of persons as employees,
* with respect to the number and relevant protected characteristics of such persons (this would include whether any employees are disabled people).
* The protected characteristics include gender, age and disability.

Each listed authority is then required to use such employee information to better perform their general equality duty.

* 1. Full guidance on the General and Scottish Specific Duties can be found here - <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-scotland>
  2. In addition the Scottish Government provides information on different equalities groups on its Equality Evidence webpages. Information on Disability can be found here – <http://www.gov.scot/Topics/People/Equality/Equalities/DataGrid/Disability>
  3. Information on specific impairments is gathered in relation to Additional Support Needs in Education. See here for example - <http://www.gov.scot/Topics/Statistics/Browse/School-Education/TrendSpecialEducation>
  4. However in general there is a shortage of “good”, detailed evidence in relation to disabled people and specific impairment groups. There is also a lack of good intersectional data. That is whilst we know the current gender pay gap we don’t have up-to-date information about the pay gap for disabled women.
  5. Under the Public Sector Equality Duty, the first equal pay statement with regards to disability is due to be published in April 2017 by organisations with over 150 employees. **We would like to see this analysis broken down by gender.** Whilst the Office for National Statistics (ONF) has published gender pay details in its *Annual Survey of Hours and Earnings*, there is no break-down for disability.
  6. The introduction by the UK Government of tribunal fees in order to pursue cases of disability discrimination in employment has had a very negative impact which is deterring disabled people from gaining access to their rights.
  7. The UK government has put a fees remission scheme in place but to qualify for a reduction an individual has to pass a monthly income and “disposal capital” (such as savings) test. The Ministry of Justice has confirmed that disability living allowance (DLA) and its replacement, personal independence payment (PIP) are counted as “disposable capital”. In practice, this means that disabled applicants who are paid DLA or PIP to meet the extra costs of disability are in the perverse situation of being judged less eligible for help with fees than non-disabled people.

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