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The implications of Brexit

for disability rights

Influencing future debate and policy

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**About Disability Rights UK**

We are disabled people leading change, working for equal participation for all. We have been delighted to work with Leeds University’s Professor Anna Lawson on this project.

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# Introduction

Disabled people make up one in five of the UK population and will be affected in specific ways by policy and legislative change flowing from the decision for the UK to leave the EU; yet disability has been barely mentioned in public and policy debate on the implications of Brexit.

This report explores the key priorities of disabled people for a post-Brexit Britain and for the period leading up to leaving the EU; sets out a Manifesto based on discussions with disabled people and allies; and explores ways in which disabled people, our organisations and allies could become more influential in public and policy debate on these issues. The hope is that it will stimulate engagement, enrich debate and support disabled people to influence post-Brexit disability rights.

We start from the position of seeking to bring people together to debate the priorities for a post-EU Britain, irrespective of how people voted in the Referendum. Our report takes no position on the merits or demerits of leaving the EU. This is important not least because disabled people are highly diverse in terms of employment status, age, ethnicity, gender, region, impairment experience and other factors. Like other segments of the population, they hold a range of views on Brexit itself and its implications. For example:

* Cross-bench (and disabled) peer Lord Colin Low stated in a Debate in the Lords on 2 February 2017: ‘When we debated the question of withdrawing from the EU last June, I said it was clear to me that disabled people would get a much better deal by remaining within the EU. In my experience, it has always been possible to get much more for disabled people from the EU than from our own Government, of whatever complexion. Now that we have decided to leave, it is important to make sure that the benefits disabled people presently derive from being in the EU are maintained by the United Kingdom. Most of the benefits come from the single market. To take just three examples… [public procurement, accessibility of the world-wide web and accessibility of goods and services]’
* Papworth Trust (2016)[[1]](#footnote-1) undertook a web-based open survey which attracted 2036 respondents, both 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). 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 (See Britain Thinks 2017[[2]](#footnote-2)).

There is no consensus amongst disabled people on Brexit but the Manifesto shows that there is more consensus on what people want post-Brexit.

The report has been written as part of a Disability Rights UK (DR UK) project, funded by the Legal Education Foundation (LEF). It is based on:

* Issues raised by disabled people and their organisations at a DR UK event held in March 2017 attended by over 40 delegates from a range of large and smaller disability organisations, including Centres for Independent Living, charities (e.g. Mencap, Scope, Papworth Trust, Motor Neurone Disease Association), Trade Unions and individual disabled people. This built on an earlier discussion at DR UK’s AGM in November 2016
* DR UK’s participation in five additional events on influencing Brexit debate and policy in relation to equality and/or disability held by: the European Network for Independent Living (which we supported and promoted), the Thomas Paine Initiative (at which we spoke), the Equality and Diversity Forum, the Joseph Rowntree Reform Trust and Cloisters Law Firm
* Interviews with another 20 Disabled People’s Organisations (DPOs) and disabled people, with particular perspectives on influencing the post-Brexit world
* An on-line questionnaire and request for views by email from Disability Rights UK members
* Analysis by Professor Anna Lawson of the legislative and policy background on the range of identified disability-related issues and concerns relevant to the UK’s departure from the EU, the negotiation of a new UK-EU relationship and the opportunities to reaffirm and entrench disability rights in UK law and policy
* Discussions with individuals working on disability and Brexit including at the Equality and Human Rights Commission and in Government.

The report is divided into six main chapters. The first discusses disabled people’s priorities, based on our engagement plus other sources. The second provides a very brief outline of the nature and scope of EU disability law and policy and thus provides some context for the subsequent discussion. Chapter 3 focuses broadly on the embedding of disability rights within UK law and policy after Brexit. Chapter 4 addresses funding issues. Chapter 5 focuses on issues connected with freedom of movement of people and citizenship. The final Chapter proposes ways forward to enhance the influence of the disability sector on disabled people’s rights post-Brexit.

The report has been written on the assumption that, as indicated by the Government in February 2017, the UK will not be seeking membership of the European Economic Area or single market.

# Chapter 1: Disabled people’s priorities

Disabled people have expressed to us and in other forums a range of general issues of concern or hope in the context of the major change of Brexit. These include:

* The concern that debate on Brexit seems to be all about trade, rather than the kind of society we want to live in. In as far as rights are discussed in a Brexit context, the most common issue flagged seems to be “workers’ rights”. These are vital, including to disabled people – but over half of disabled people of working age are not working, many more are in receipt of pensions and this focus omits attention to rights in areas such as accessibility, which are important whether or not people are ‘workers’. Some people we spoke to have welcomed the contribution of the EHRC that broadened the debate:

‘We’ve had calls for all kinds of Brexit. A soft Brexit, a hard Brexit and a red, white and blue Brexit. No one is talking about a fair Brexit – one that will unite the country and lead us to a shared society based on fairness and mutual respect the Prime Minister has talked about’ (David Isaac, 2017 [[3]](#footnote-3)).

This indicates a need for the disability sector, working with others, to re-frame the Brexit debate and put disability rights at its heart.

* The concern that in the 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 when we leave the EU and to facilitate engagement by disabled people across the country.

‘I don't think we have enough emphasis on educating people with disabilities about human rights in this country and also the legal framework…..I think if people had a greater understanding, both people with disabilities but also those without disabilities, of what rights mean to them, and also how the law works to protect them, then we might not be in the situation where we are constantly having to say these are our rights and this is why we need them’ (Participant in DR UK round-table 29 March 2017)

This suggests both a medium-term aim of improving disabled people’s knowledge and use of rights, an aim DR UK is pursuing vigorously through a new project called Right to Participate (which includes an innovative interactive guide to increase disabled people’s understanding of their legal rights), and a shorter-term communications effort to explain rights and the impact of Brexit to disabled people.

* The fear that important UK Government action will stall because virtually all civil service and Ministerial energies go into Brexit. For instance, the UK Government is being examined in 2017 by the UN Committee on the Rights of Persons with Disabilities; and Disabled People’s Organisations (DPOs) hope for a clear action plan following the Committee’s concluding observations on the major human rights issues identified (see www.disabilityrightsuk.org/news/2017/january/disabled-people-tell-un-committee-uk-failing-international-rights-convention). However, if Government attention is channelled overwhelmingly into Brexit, will there be any chance this hope will be realised?

We are not alone in fearing that important social reform will go on the back burner in favour of Brexit, which has been described by Sir Jeremy Heywood, Cabinet Secretary, as ‘the biggest, most complex challenge facing the civil service in our peacetime history’. For example:

‘There is a danger that Brexit could suck all the oxygen out of attempts to implement a sweeping programme of social and economic reform that is badly needed at home’ (Campbell Robb, CEO, Joseph Rowntree Foundation[[4]](#footnote-4))

This suggests a need for unified, focused campaigning to press Government to act on major human rights issues. Disability groups are working closely together on the UNCRPD examination with the aim of achieving this.

* Hopes of gains from leaving the EU. The Papworth Trust survey of disabled people and disability workers found that more people thought life would get better after Brexit in the following areas than thought they would get worse: people’s chances of getting a job, the NHS, the education system.

Whether simply leaving the EU will achieve these positive changes is open to debate – but learning for disability organisations about these expectations could mean building these priority issues into campaign planning (distinct from campaigns on Brexit itself). There may be an appetite for involvement in campaigns on education, the NHS and better job opportunities for disabled people. For instance, DR UK and others are working hard to influence Government to expand its plans to achieve its goal of halving the disability employment gap, going beyond the relatively narrow intentions in its 2017 Green Paper and influencing industrial strategy, skills and more[[5]](#footnote-5).

Most comments from disabled people, however, have focused on more specific implications of Brexit itself – as follows.

## 1.1 Embedding Disability Rights in UK (and Devolved) Law and Policy

Disabled people have raised with us the importance of:

* preserving existing disability rights
* ‘no regression’ or watering down of those rights and
* in future, continuing progress – to keep ahead of the curve, not be left behind by other EU countries

The legislative and policy detail of these points is explored in Chapter 3. The specific issues raised most commonly with us were:

* Fear of losing existing rights, for instance:

‘We must be very, very sure…that the status quo won’t be worse after the Brexit. There are so many laws; there are for example the 2006 aviation regulations - airlines not to discriminate against disabled passengers. That is not in the Equality Act. If we're losing this - and this is just one example and I can give 10 others - if you lose this law, this country goes back quite a long way in two years. Or regulation on the manufacturing of buses (it is not allowed for public bus companies to produce buses which are not low floor). That would never be a national law normally; it was made by the EU’. (Contributor at DR UK round-table, 29 March 2017)

Other specific rights mentioned were website accessibility, manufactured goods and accessibility in procurement processes.

‘And, whatever you do, please ensure that you and disabled people's organisations all over Europe, lobby hard to prevent our Prime Minister, Teresa May from fulfilling her wish to leave the European Convention on Human Rights post Brexit, should she win the 2020 general election’ (Baroness Jane Campbell, presentation to European Network for Independent Living event on Brexit, 2017)

* ‘No regression’ – for instance, no watering legislation down by incorporating primary EU law but not important secondary legislation; and no amendment to incorporated EU law without proper parliamentary scrutiny.

‘The main concern of mine, shared by many others I have spoken with in the disability sphere, is that unless [EU rights important to disabled people] are specifically highlighted during Brexit negotiations most will then simply be disregarded and seen as being ‘unnecessary red tape’ once the UK formally leaves the EU…..There are literally thousands of regulations and rules governing the design, functionality and usability of almost every product and object in the home and general environment, indoors and outdoors, which contain elements of disability related consideration. Achieving this has often involved painstaking and careful lobbying and dialogue between disability organisations, companies and industry representatives, often taking years……There is real concern within disability organisations that following the UK’s actual exit from the EU in 2019, most of the rules and regulations will then quickly be discarded, either wholly or in part, in the apparent interests of easier corporate competition or free trade’[[6]](#footnote-6)

* Continuing progress: ensuring the UK continues to aim to be ahead of the curve and does not fall behind other EU countries as they continue to develop. For instance, an EU Accessibility Act is currently being negotiated. It would make a big difference in areas like accessibility standards for manufactured goods, computers, mobile phones and TV set top boxes[[7]](#footnote-7). It is important that the UK does nothing at this stage to obstruct it; and that if possible it is passed before the UK leaves the EU, so that it becomes part of the EU legislation incorporated into UK law.

In future there may also be important new developments in EU legislation in relation to employment of disabled people, or education; and the UK must not be left behind.

This suggests that there is a clear appetite to both safeguard and develop significant rights. This agenda could form the basis for lobbying and influencing.

## 1.2 Funding

NCVO (2016) estimates that UK charities benefit from over £300 million in EU funding per year[[8]](#footnote-8). In the disability sector, this seems particularly to affect larger disability charities: smaller DPOs typically are less likely to bid for EU funding.

Some parts of the UK have benefited particularly from EU funding, for instance:

‘Northern Ireland is a net recipient of funds, both from the UK Exchequer and also from the EU as a whole, on a pro rata basis. We have a very real threat of a funding crisis. When those funds from the European Union cease, it is unlikely that a Conservative party with no Northern Ireland MPs and very few votes will replace those funds in Northern Ireland, and I think it is even less likely a Labour Party will replace those funds, as they don't even allow their members to stand for election in Northern Ireland. Therefore, there is a fear the funds that come from European Union monies, particularly in respect of Civil Society organisations, particularly in respect of DPOs, particularly in respect of wider voluntary sector groups, that these monies will go, they will not be replaced and there will be a dearth of representation of people with disabilities in Northern Ireland because these organisations cannot sustain themselves. Northern Ireland is a very heavily public sector funded entity, and with the absence of these European funds, predicated on the basis that the UK Exchequer will not replace them, then there is a very real crisis in terms of espousing the voice for people with disabilities in Northern Ireland’. (Patrick Malone, Disability Action Northern Ireland, March 2017)

In addition, disabled people can benefit significantly from EU research funding, likely to be hit by the UK leaving the EU. There is a lively cross-European network of disability researchers (e.g. The Academic Network of European Disability Experts (ANED) at [www.disability-europe.net/](http://www.disability-europe.net/)). Their work focuses on issues of concern to disabled people such as independent living and political participation.

This suggests that the disability sector needs to lobby just as hard as the farming or university sectors for replacement funding where EU funding is lost.

## 1.3 Freedom of Movement

At DR UK’s March 2017 event on Brexit, disabled journalist Christiane Link spoke powerfully of the fears that disabled people from non-UK EU countries face in the lead-up to Brexit:

‘I'm a journalist and I have worked for media outlets for nearly 10 years now in the UK. I came here from Germany to work for the BBC and I'm one of the EU migrants who from one day to another became scapegoats for this country and I'm quite surprised with what has happened in this country. After the referendum I looked to how to secure my status here; for 10 years that was never ever a topic - I showed my German passport everywhere and was treated like a British citizen and it was never a topic. Then more and more EEA citizens started to apply for permanent residence. It's a card that confirms your status that you're here for more than five years and are exercising treaty rights… It gives you the right still at the moment to go to every EU country and stay there and work there as long as you want and after 5 years you have permanent residence which is the same as indefinite leave to remain for non-EEA citizens.

I found a Facebook group which maybe at that time had 5,000 members all EEA citizens who wanted the permanent residence card. There were lawyers at the time giving free advice… I noticed that that there are several groups in this group who can't apply for a permanent residence card, [some] strongly related to the topic of disability. These are disabled people who have lived here for quite a long time but never exercised treaty rights’.)

Christiane went on to explain that people were seeking permanent residence in the new climate, to secure their status, but often being refused. The Home Office, she explained, had not published overall data on reasons for refusals but one key reason was not being ‘self-sufficient’ – which might be because you have developed an impairment whilst in the UK, or because you are a full-time carer, or because you have had a disabled child, or because you are unable to get ‘comprehensive health insurance’ – one of the criteria for being self-sufficient, which is extremely hard to obtain if you have pre-existing conditions.

This suggests the disability sector needs to scrutinise in detail plans for the status of EEA nationals – with the aim of removing discriminatory provisions impacting on disabled people.

Another major issue concerns the Personal Assistants that many disabled people employ, using their personal budgets from local authorities, or their own funds. Disabled people told us that they often employed PAs from other EU countries.

‘I declare an interest as someone who has employed personal assistants from at least 10 EU countries during the past 25 years. I am not unusual. There are thousands of disabled people who do the same. Our personal assistants—some call them carers—are a mixture of UK and EU nationals. They are crucial to our independence and our freedom to enjoy a private and family life, to work, to socialise and to raise children. Our employees are funded mainly by social care or healthcare personal budgets. During the past 30 years, increasing numbers of disabled people have become employers.

When preparing for this debate, I searched for data on how many EU nationals were employed as personal assistants. I contacted the United Kingdom Homecare Association and independent living PA agencies, such as Independent Living Alternatives and PA Pool. No specific data were available but we know there are more than 70,000 EU citizens working in social care. I then contacted disabled employers through social media platforms to find out more about their reasons for seeking personal assistants from EU countries.

Everyone I heard from said first that the pool of potential UK employees was drying up, yet demand for care workers continued to rise. The EU workforce was therefore an essential supplement, and all were concerned about moves to restrict it. Other reasons given for recruiting EU nationals were a strong work ethic and reliability, and the fact that the job tends to attract single people, who, as a rule, are found to be more flexible in their working hours, giving much-valued opportunities for spontaneity. They are keen to fill live-in employment positions. This helps disabled people who live in rural villages where local employees are limited. Some commute to and from their home countries between work stints. Such flexibility is a win-win situation for both employers and employees.

I spoke also to John Evans, a quadriplegic man and pioneer of independent living for disabled people in the UK and internationally. He said:

“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”,

and he will have to return to residential care. We constantly hear about the threat to the NHS if restrictions to work in the UK are tightened. The PAs and carers employed by thousands of disabled people must be accorded the same attention; otherwise, the current social care crisis will worsen and disabled people will lose the right to independent living, as set out in Article 19 of the UN convention.

The Equality and Human Rights Commission shares my concern. In its evidence to the Joint Committee on Human Rights’ Brexit inquiry, it said that any change in Immigration Rules,

“should be subject to a rigorous equality and human rights impact assessment”.

Will the Minister assure the House that this assessment will be carried out rigorously and shared with Parliament? Will he also guarantee that disabled people and their organisations will be thoroughly involved in any Brexit developments regarding access to the EU workforce? Our independence depends on it.’ (Baroness Jane Campbell, House of Lords, 2 February 2017)

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.

We also heard about the potential difficulties for both British Citizens living in other EU countries and EU citizens living in the UK, if there are not adequate reciprocal arrangements on healthcare (currently provided through the EHIC card) and social security. For instance:

* if disabled British citizens living in Spain can no longer use Spanish health services unless they buy comprehensive health insurance – but cannot buy it because of lack of cover for pre-existing conditions – then will they need to return to the UK, and vice versa for Spanish disabled citizens living in the UK?
* if an EU citizen living in Britain is working, and claims Personal Independent Payment and Access to Work – covering extra costs of disability and necessary adjustments – will they in future be viewed as ‘self-sufficient’?

We also heard of a specific cross-border issue affecting people in Northern Ireland: some people from the North use health services across the border, through reciprocal arrangements. This helps people to get to the most relevant service, which is particularly important in rural areas. This arrangement is likely to stop with Brexit. Without much-improved accessible transport this may pose a particular challenge to disabled people needing to access healthcare.

# Chapter 2: European Union Disability Law and Policy: Summary Overview

A key driver of current EU disability policy is the United Nations Convention on the Rights of Persons with Disabilities (CRPD).[[9]](#footnote-9) The EU played an active part in the UN Ad Hoc Committee which drafted the terms of the CRPD and, in December 2010, the EU ratified (or formally confirmed) the CRPD and thereby became a party to a UN human rights treaty for the first time.

The EU’s initial report on its implementation of the CRPD[[10]](#footnote-10) was submitted to the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) in June 2014 and provides what is the most comprehensive account to date of how various EU actions (including legislation, funding, schemes for mutual co-operation and recognition, data collection mechanisms, research, dialogue, good practice exchange and training) have been harnessed to align the rules and practices of EU institutions more closely to the CRPD and to support Member States (including the UK) in their CRPD implementation efforts. After a constructive dialogue with the EU in the autumn of 2015, the CRPD Committee published its Concluding Observations on the EU which include various recommendations.[[11]](#footnote-11) These, together with the critique provided in the shadow or alternative reports submitted by a range of EU-level disabled people’s organisations provide additional useful information and perspective on EU disability law and policy.

Particularly high profile examples of EU action on disability rights take the form of legislation binding on Member States. Examples include:

* the Employment Equality Directive of 2000,[[12]](#footnote-12) which requires Member States to prohibit disability discrimination in employment;
* the Air Passenger Rights Regulation of 2006[[13]](#footnote-13) (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 EU Medicinal Products for Human Use Directive 2004,[[14]](#footnote-14) which requires the packaging of medicinal products to include Braille labelling;
* the Public Procurement Directives of 2014,[[15]](#footnote-15) which require public bodies to include accessibility in technical specifications; and
* the Public Sector Websites and Mobile Applications Directive of 2016,[[16]](#footnote-16) which requires public sector bodies to ensure that their websites and mobile apps comply with accessibility standards so that they can be used by disabled people.

The opportunities of the EU to introduce legislation are limited, however, by both the competences (or powers) granted to it in its two underpinning treaties and by the political commitment and co-operation of Member States. It is therefore important to recognise that EU action in the disability context takes many forms other than that of legislation. Examples include:

* providing funding for EU-level disabled people’s organisations – according to the EU’s report submitted to the CRPD Committee, “Since 2010, grants directly aimed at supporting and strengthening the operational and advocacy capacity of EU-level organisations have been awarded annually …. In 2015–2017, EUR 2.2-3 million will be available annually to such support, and a partnership has been established with eight leading EU-level NGOs representing a diversity of disabilities and stakeholders. Their work programmes support the implementation of the Convention and the Disability Strategy …”[[17]](#footnote-17);
* embedding disability rights conditions in the spending of EU funds – e.g. in the current Structural Funds Regulations in which ex-ante conditionalities include independent living and in which accessibility and non-discrimination have cross-cutting relevance;
* mutual recognition schemes – such as the EU Parking Badge scheme and the E111 scheme;
* the generation, dissemination and analysis of disability-related data – e.g. in the work of Eurostat, the EU Agency for Fundamental Rights and the EU Academic Network of European Disability Experts (including its Disability Online Tool of the Commission); and
* fora for exchanging and developing good practice – such as the Disability High Level Group, Equinet and the European Commission’s annual Work Forum on the CRPD.

In 2010, the European Commission published the European Disability Strategy 2010-2020 (EDS).[[18]](#footnote-18) Although this was described in the EU’s initial report to the CRPD Committee as setting out the “EU’s policy on disability”, concern was expressed both by the European Disability Forum (EDF) and the CRPD Committee, that it is in fact a European Commission strategy which does not necessarily shape the strategic commitments or priorities of other EU institutions. The overall aim of the EDS is to “empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society and in the European economy …”. Its opening paragraphs repeatedly refer to the CRPD and the key role it played in shaping the EDS. Whilst it is concerned with EU-level actions, frequent reference is made to the fact that these will operate to supplement and support national initiatives.

The main body of the European Disability Strategy identifies eight priority “areas for Action” – “accessibility”, “participation”, “equality”, “employment”, “education and training”, “social protection”, “health” and “external action”. Commitments to EU action in these areas (including by proposing legislation which would bind Member States – such as a European Accessibility Act[[19]](#footnote-19) - and other action to supplement and support national-level initiatives) are underpinned by commitments to provide cross-cutting support in the form of initiatives relating to awareness-raising, financial support through EU funds, data, statistics and monitoring, and CRPD-related governance. A report on progress in the implementation of the Strategy, and on actions in response to the CRPD Committee’s Concluding Observations on the EU, was published by the Commission in February 2017.[[20]](#footnote-20)

The UK has been a very active participant in the development and implementation of EU disability law and policy. While it has undoubtedly played an important part in strengthening the EU disability rights agenda, EU disability law and policy has also pushed forward and underpinned disability rights protections in the UK.

# Chapter 3: Embedding Disability Rights in UK (and Devolved) Law and Policy

## 3.1 Ensuring Disability Rights are Preserved by the Great Repeal Bill

In October 2016, the Government announced that it would be introducing a ‘Great Repeal Bill’ – an initiative subsequently explained as follows:

“To provide legal certainty over our exit from the EU, we will introduce the Great Repeal Bill to remove the European Communities Act 1972 from the statute book and convert the … body of existing EU law … into domestic law. This means that, wherever practical and appropriate, the same rules and laws will apply on the day after we leave the EU as they did before.”

A White Paper, setting out the proposed content of this Bill, was published on 30 March 2017.[[21]](#footnote-21) A number of issues connected with this Bill have particular relevance to disabled people and others concerned to ensure that equality and human rights remain at least as strong in post-Brexit UK as in pre-Brexit UK. These include the following:

First, it will be important for the disability sector to identify those rights which EU law makes part of UK law even though they do not appear explicitly in UK legislation. 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 in the disability context are the various EU passenger rights regulations which govern matters such as the accessibility of vehicles and assistance for disabled passengers whilst on board. It would be helpful for those concerned with disability rights to have a clear understanding of what disability-related rights or matters fall into this category so that they can ensure disabled people and others are aware of their existence. This is important to ensure that they are preserved by the Great Repeal Bill (without being ‘corrected’ in such a way as to reduce their effectiveness) and to safeguard them against subsequent repeal or abandonment. Efforts should therefore be made to ensure that disability-related rights are comprehensively included in initiatives such as Liberty’s research on human rights and Brexit.

Disability-related rights may be absent from the face of UK legislation for an additional reason – they might be contained in EU directives which have not been transposed into UK law before the date of our departure from the EU. This might well be the case for rights set out in the Public Websites and Mobile Applications Directive of 2016[[22]](#footnote-22) and, if it is adopted by the EU before Brexit, the European Accessibility Act.[[23]](#footnote-23) Political advocacy might well be needed to ensure that the Great Repeal Bill transfers into domestic law directives adopted before Brexit – regardless of whether transposition into UK law has occurred by that time.

A second issue concerns EU law (e.g. directives) which has been transposed into UK law in the form of secondary legislation (often referred to as statutory instruments or regulations). Many EU directives are implemented through secondary legislation by virtue of powers conferred on government (to introduce statutory instruments to give effect to EU law) by the European Communities Act 1972. Disability-related examples include the regulations giving effect to the EU procurement directives.[[24]](#footnote-24) Thus, according to regulation 42(8) and (9) of the Public Procurement: Public Contracts Regulations 2015,

“(8) For all procurement which is intended for use by natural persons, whether the general public or staff of the contracting authority, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for disabled persons or design for all users.

(9) Where mandatory accessibility requirements are adopted by a legal act of the EU, technical specifications shall, as far as accessibility criteria for disabled persons or design for all users are concerned, be defined by reference thereto.”

Generally, when the statute (or primary legislation) under which secondary legislation has been made is repealed, the secondary legislation is also repealed. However, the White Paper makes it clear that specific provision would be made in the Great Repeal Bill to ensure that secondary legislation drawn up under the European Communities Act 1972 would remain part of UK law despite its repeal of the European Communities Act.[[25]](#footnote-25) While this assurance is welcome, it does not remove all the difficulty. 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. There is therefore a case for arguing that important measures contained in secondary legislation drawn up under the European Communities Act should be given the security of a place in primary legislation or that the Great Repeal Bill should require a similar degree of parliamentary scrutiny for any changes to regulations introduced under the European Communities Act 1972.

## 3.2 Guarding Against Regression

### (a) Avoiding or Restricting Henry VIII Clauses in the Great Repeal Bill

What are often known as ‘Henry VIII clauses’ are provisions in statutes which give the government power to amend or repeal primary legislation (ie provisions in statutes or Acts of Parliament) by way of secondary (or delegated) legislation. As the Joint Committee on Human Rights explains:

“Henry VIII clauses take their name from the Statute of Proclamations 1539 which gave King Henry VIII power to legislate by proclamation.”

Such clauses thus allow the government to effect change without going through the parliamentary processes required for amending or repealing primary legislation.

Various witnesses, including the Bingham Centre for the Rule of Law, expressed concern to the Joint Committee on Human Rights that ‘the “enormous task of Brexit law reform” would give rise to a temptation to delegate large swathes of legislative power to the Executive by passing skeletal primary legislation that includes broadly drafted provisions that delegate law making to the Executive, sometimes using Henry VIII clauses. As EU law would no longer apply, the government could then use such clauses to repeal provisions which confer and protect fundamental rights without the need for parliamentary approval. Accordingly, the Joint Committee on Human Rights recommends as follows:

“Assuming that the Repeal Bill safeguards existing rights under EU law, this would not stop a future Parliament from repealing laws that it did not consider desirable. Without the underpinning of EU law, the rights preserved under the Repeal Bill would be subject to amendment. Under the UK constitution, outside the auspices of EU law, there is no way to entrench fundamental rights. However, the Government must resist the temptation to allow laws relating to fundamental rights to be repealed by secondary legislation for reasons of expediency. If rights are to be changed there should be an opportunity for both Houses to seek both to amend and to vote on such changes.”

The White Paper indicates that Henry VIII clauses will indeed be introduced into the Great Repeal Bill. It suggests that their remit will be confined to, “enabl[ing] corrections to be made to the laws that would otherwise no longer operate appropriately once we have left the EU, so that our legal system continues to function correctly outside the EU, and … also enabl[ing] domestic law once we have left the EU to reflect the content of any withdrawal agreement under Article 50”.[[26]](#footnote-26) It also acknowledges the importance of placing limitations on the use of such powers whilst at the same time stressing the need for them to grant the flexibility and scope necessary for correcting EU-derived law so that it works appropriately in a purely domestic context.[[27]](#footnote-27) The balance between these competing needs has not yet been resolved and it is an issue on which political vigilance is clearly important.

### (b) Including a Human Rights Non-Regression Clause in the Great Repeal Bill

As the Government has explained, the aim of the Great Repeal Bill would be to transpose all relevant EU law into domestic UK law so that, as far as possible, the legal position would continue relatively unchanged even after EU law ceased to apply. EU law would then no longer prevent the relevant rules being revoked or amended in ways which would fall short of EU law. Thus, in its words, after Brexit,

“Parliament (and, where appropriate, the devolved legislatures) will be able to decide which elements of [EU-derived] law to keep, amend or repeal once we have left the EU”.[[28]](#footnote-28)

One of the key recommendations made by the House of Commons’ Women and Equalities Committee on equality and the Brexit process is that:

“The Government should include a clause in the Great Repeal Bill that explicitly commits to maintaining the current levels of equalities protection when EU law is transposed into UK law.”[[29]](#footnote-29)

A number of possible versions of such a clause are included in the annex to the Women and Equalities Committee report.[[30]](#footnote-30)

## 3.3 Constitutionalising/Mainstreaming Equality and Human Rights

### (a) Giving the UN Convention on the Rights of Persons with Disabilities Greater Status in Domestic Law

The EU is a party to the CRPD. The impact of ratified international treaties is greater in EU law than it is in UK law. In EU law, the treaty acquires a status and influence beneath that of the foundational treaties but above that of secondary law (e.g. regulations and directives). It must therefore be taken into account by the Court of Justice in its interpretation of secondary law and by all EU institutions in the development of law, policy and practice.

The UK, by contrast, adopts the classic ‘dualist’ approach to international law. This means that ratified UN treaties (including the CRPD) have no effect on domestic law except to the extent that it is given effect through UK legislation – although it may be taken into account by courts to help interpret unresolved or ambiguous questions of law. The UK Independent Mechanism (consisting of the Equality and Human Rights Commission, the Scottish Human Rights Commission and the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission), in its ‘shadow’ report to the CRPD Committee, has suggested that legislation should be introduced which incorporates the CRPD more directly. According to it:

“UKIM does not consider that UK and devolved governments consistently give CRPD due consideration, and there are currently no domestic mechanisms to hold them to account for failing to do so.

Scotland’s First Minister has welcomed exploration of ‘implementing and incorporating into Scots law some key international human rights treaties’. However, to date no concrete steps have been taken.

The Social Services and Well-being (Wales) Act’s Code of Practice makes reference to the UNCRPD. However, the Welsh Government has not put consideration of UNCRPD onto a statutory footing in the same way as the UNCRC. ”[[31]](#footnote-31)

Introducing an explicit statutory requirement along the lines that public authorities (including government) have due regard to the CRPD would help to embed the CRPD more clearly and consistently in policy-making. It would help to mitigate against any reduction in the weight given to the CRPD caused by Brexit, although it would not be an exact replacement.

### (b) Mainstreaming Accessibility Requirements into Public Information and the Spending of Public Funds

In recent years, a range of EU laws have explicitly embedded accessibility into the payment of public funds (as well as in other fields). In relation to the payment of EU funds, there are relevant requirements concerning the use of Structural and Investment Funds by Member States,[[32]](#footnote-32) and funds allocated to ‘external action’.[[33]](#footnote-33) There are also relevant requirements (as mentioned above) in the Public Procurement Directives which apply to the spending of public monies within EU Member States. The proposed European Accessibility Act would give content to these requirements by providing a mechanism for explaining the meaning of ‘accessibility’ as well as setting out regulatory and enforcement mechanisms.[[34]](#footnote-34)

In addition, as discussed above, the new 2016 directive on public websites and mobile apps imposes accessibility requirements on public authorities. So too do directives on audio-visual and media services in the context of broadcasting and communications.

In a post-Brexit UK, there should be mechanisms for ensuring that accessibility is similarly defined and embedded in the use of public funds and public information.

(c) Introducing an Equality-Compatibility Clause

Equality is a general principle of EU law, which is taken into account in the interpretation of EU law (including by the Court of Justice of the European Union) in appropriate cases. When the UK exits the EU, this will no longer be part of our law. As Sandra Fredman observes:

“The UK is unusual in not having a constitutional protection for the right to equality, which many other countries do. In some ways, the EU has performed that function.”[[35]](#footnote-35)

The Women and Equalities Committee has therefore recommended that the UK take steps to give greater weight to equality in law-making processes.

“The Government should give strong consideration to bringing forward an amendment to the Equality Act 2010 to mirror provisions in the Human Rights Act 1998. The purpose of that amendment would be to set out that public authorities must not act in a way that contravenes the Equality Act unless required to do so by another Act of Parliament; that ministers, when presenting any Bill, must make a declaration of compatibility with the Act; that interpretation of legislation by the courts must take account of the Act and be read as far as possible to comply with its provisions; and that, if any legislation is incompatible with the Act, a declaration of incompatibility should be made by the court.”[[36]](#footnote-36)

### (d) Adopting a Cross-Government Equality Strategy

The Women and Equalities Committee recommended the establishment of a cross-government equality strategy and a platform for close collaboration with civil society organisations. In its words:

“78. We believe that there is a wealth of expertise on equalities in civil society organisations that could be harnessed to enhance the development of UK equalities policies after exiting the EU. In some places, there are already platforms or structures in place that may need to be built upon. In others, they need to be developed. A joined-up approach across government departments will be important to ensure cohesive working, and with a focus on each equality area.

79. The Government should develop a cross-government equality strategy, in order to ensure engagement across government departments and provide a platform for linking with and drawing on the expertise of civil society organisations.”[[37]](#footnote-37)

### (e) Embedding Strong Human Rights Clauses into New Trade Agreements

The EU includes ‘human rights clauses’ in international trade agreements it concludes with non-EU countries. As the Joint Committee on Human Rights explains:

“A standard human rights clause may comprise an ‘essential elements’ clause referring to basic human rights and democracy standards, and a ‘non-execution’ clause that provides for a mechanism for applying ‘appropriate measures’ (such as sanctions) if the other party violates an ‘essential elements’ clause. …

If one of the parties does not comply with this human rights commitment, the trade agreement or parts of it can, as a last resort, be suspended.”[[38]](#footnote-38)

After Brexit, the UK will be negotiating and entering into bilateral international trade agreements and will have the opportunity to include human rights clauses. As the Joint Committee on Human Rights acknowledges, it will be important that such clauses are included and that they do not fall below the standard of those in similar EU trade agreements.

“105. The EU has included human rights clauses in trade agreements for many years. In circumstances where the UK exits the EU, if it has to negotiate and enter into trade agreements with other states, the Government should, at the very least, ensure that the standards included in current agreements are maintained.

106. Any dilution of standards would give rise to a potential imbalance between UK standards and EU standards which would be extremely undesirable. There is, in principle, an argument to be made that if the UK enters into any new agreements, this is an opportunity to raise standards.”[[39]](#footnote-39)

Such clauses should be inclusive of the human rights of disabled people in future agreements negotiated by the UK. This would be consistent with EU policy - considerable efforts having been made in recent years to ensure that disability rights are embedded in all aspects of its external action.[[40]](#footnote-40)

# Chapter 4: Funding

## 4.1 Funding for Disability-Related Schemes/Work

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 Papworth Trust:

“The EU currently provides millions from the European Social Fund[[41]](#footnote-41) to support a range of schemes for disabled people, such as help with work experience, wage subsidies and support for the self-employed. It has provided much needed funds for education and training, community services and independent living. Many of these services and initiatives are provided by NGOs including organisations run by and for disabled people.”[[42]](#footnote-42)

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. The importance of this issue was noted by the 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.”[[43]](#footnote-43)

Convincing the UK government that equivalent or greater funding opportunities should be made available after Brexit is likely to be a high priority for disabled people and their organisations.

## 4.2 Disability-Related Research

Various EU funding streams have also been available for disability-related research. As Sussex University explained in its evidence to the Women and Equalities Committee,

“There are likely to be indirect and long term impacts on equality protection in the UK if the research community loses access to EU funding sources, as seems likely. Particularly given that the UK is one of the largest recipients of research funding in the EU. This will have an impact on the evidence base for equality and law in the future.”[[44]](#footnote-44)

That Committee also quotes the following observations by the Minister for Women and Equalities about the UK’s strong research base in equality:

“I am looking to see what we can do to strengthen it further. I would like to see the UK really be a trailblazer in having a strong evidence base around what works, in tackling discrimination, particularly around gender.”[[45]](#footnote-45)

While this recognition is welcome, there is perhaps work to be done in maintaining the profile of disability in this exercise.

## 4.3 Membership of Particular Bodies or Networks

During the Brexit negotiations, the UK will have the opportunity to offer funding (or other) contributions in order to have continued membership of or involvement in particular bodies. Some of these have particular disability-relevance, including the following:

* European Medicines Agency: There have been suggestions (which should be further investigated) that ongoing membership of this would facilitate speedy and safe access to new treatments.[[46]](#footnote-46)
* Euratom (the European atomic energy community): There have been suggestions (which should be further investigated) that membership of this body facilitates access to medical isotopes for use in radiotherapy.[[47]](#footnote-47)
* Horizon 2020 and European Research Council: These are major sources of EU funding which facilitate collaboration between researchers across Europe and across disciplines. The Women and Equalities Committee has urged that:

“… leaving the EU does not mean that the UK cannot continue to play a part in European networks. This may mean opting into these networks on a pro-rata basis, which may require funding that was previously provided as part of EU membership. The Government should seek to set aside funding for ensuring that UK research and civil society organisations can maintain international links that are vital for ensuring strong equality protection.”[[48]](#footnote-48)

* Equinet: This is a network of EEA equality bodies which is supported by the EU. It should be noted, that on-going membership of the European Network of Human Rights Institutions would be open to the UK equality bodies after Brexit without the need for specific negotiation or additional payment by the UK. Currently the CRPD Working Group of ENHRI is chaired by the UK-based Equality and Human Rights Commission. Additional resource would strengthen the work this group is able to undertake.

# Chapter 5: Freedom of Movement of People

## 5.1 Disability and the Right of EEA Nationals to Permanent Residence in the UK

There are concerns (raised in the interviews carried out in connection with this study and outlined in Chapter 1 above) that disabled people from other countries in the European Economic Area (EEA) who have been living in the UK for five years or more might well experience disability-related disadvantages when it comes to establishing a right to permanent residence in the UK. According to guidance on the Citizen’s Advice website,[[49]](#footnote-49) in order to establish permanent residence:

“Throughout the five years you must have been one of the following:

• a job-seeker

• a worker

• self-employed

• a former worker who has kept your worker status

• a student who is self-sufficient

• self-sufficient and supporting yourself financially

• a family member of a person in one of these groups.”

It seems likely that a disproportionate number of disabled people will struggle to demonstrate that one or more of these conditions applied throughout a five-year residence period. Efforts should be made to highlight this to government and campaign for disabled people who have lived in the UK for many years not to be exposed to any indirect discrimination as regards citizenship and opportunities to continue living in the UK after Brexit.

In addition, family members of a disabled EEA national may struggle to satisfy the relevant permanent residence requirements where, for instance, they have not sought paid work because they have been providing care to their disabled relative. Further, in situations where a disabled EEA national is able to establish the conditions for permanent residence, in part because of informal care provided by a family member, that family member may not necessarily be entitled to continue living in the UK. Only certain categories of family member can be invited to enjoy residence rights and these do not include, for example, parents or carers of a disabled adult.

Similar worries and uncertainties will undoubtedly affect disabled people from the UK who are currently living in other EAA countries. The concerns stem, in part, from conditions laid down in EU law on the residence rights of EAA citizens[[50]](#footnote-50) which appear to operate to the disadvantage of many disabled people – an issue with implications beyond Brexit. For current purposes, however, a key concern is that attention is given to the situation of disabled nationals of other EAA countries living in the UK, and vice versa, in the Brexit negotiations.

## 5.2 EU Workers

Individual accounts from disabled people (such as those set out in Chapter 1 above) draws attention to the importance to them of being able to employ personal assistants from other EEA countries. The importance of retaining access to this pool of workers after Brexit was recently highlighted by Baroness Jane Campbell and others in the House of Lords.[[51]](#footnote-51) Detailed research capturing the extent to which personal assistants are drawn from EEA countries in the UK would be helpful. Nevertheless, there is already sufficient evidence to demonstrate the need for government to have regard to this issue when considering new immigration rules and future arrangements with EEA countries.

Another pool of EEA workers with particular relevance to disabled people are health and care workers. Again, a series of media reports have highlighted the extent to which the NHS currently relies on nurses, doctors, care staff and others from EEA countries. This group, too, is one to which the government should have particular regard when elaborating new immigration rules and future arrangements with EEA countries.

## 5.3 Mutual Recognition Schemes

There are a number of specific schemes, based on mutual recognition, which confer entitlements that people from one EEA country can use in another. Some of these have particular relevance to disabled people and might be issues which the disability sector might wish to draw to the attention of those involved in negotiating Brexit. Examples include the following:

* The EU parking badge scheme, which recognises preferential terms for the use of certain parking facilities by disabled people in all EU countries.
* The EU Disability Card Scheme (which is currently being piloted). This would provide a mechanism by which disabled people from one country could demonstrate this in other countries and thereby access disability-related discounts or privileges available in that country (e.g. reduced fares or ticket prices).
* The European Health Insurance Card scheme (E111), which provides access to free or reduced cost medical treatment during stays in other EU (or EEA) countries and Switzerland
* Cross-border healthcare arrangements, which entitle people from one country to access treatment in other countries in certain circumstances. Whilst UK residents have benefited from this, arguing for its continuation post-Brexit is likely to prove contentious because of its implications for people from other countries having access to the NHS. Questions might arise, however, about whether particular arrangements could be negotiated with Ireland in light of the land border between the UK and Ireland.

## 5.4 Transport

Finally, mention should again be made of EU passenger rights regulations on travel by air, ship, rail and coach. 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.

# Chapter 6. Conclusion and Strategies for Influence

The discussion above has identified disabled people’s priorities, mapped out some of the disability-related questions raised by Brexit and suggested a number of potential initiatives and campaigns. Below, we outline a short ‘Manifesto’ based on our engagement with disabled people and DPOs. We also suggest below some potential routes to influencing based on the Manifesto. Some of these will be more urgent and time-sensitive than others and no attempt to draw up a timeline has been made at this stage.

We have engaged disabled people and DPOs on-line, through events and interviews and secured sign-up to our Manifesto from a range of prominent DPOs and disability charities. Following this report there is further work to do to reach larger numbers of disabled people, and disability organisations, to raise further awareness with them of the implications of Brexit for disability rights and to engage them in future work. Furthermore, many of the issues mentioned here will be of concern to organisations and individuals working in issues other than disability – and these organisations are often important allies. We have talked with organisations including the Equality and Diversity Forum, the Equality and Human Rights Commission and the Office for Disability Issues in Government, in order to plan strategies for influence that complement and add value to their work in this area. We have raised with the Minister for Disabled People Penny Mordaunt the key issues we have identified and asked her to ensure these issues are factored in to Government negotiations and plans on Brexit; she responded positively. We also raised the issue with the Disability Charities Consortium (the eight large disability charities), who shared with each other a list of key issues that included our identified concerns, so that the whole disability sector draws on similar points in its influencing work with Government.

It should also be stressed there will almost certainly be disability-related Brexit issues which are not addressed here. The engagement strategy adopted by the sector will need to have in-built flexibility to recognise, integrate and respond to newly emerging concerns and opportunities.

With these provisos in mind, we present the following Manifesto for disability rights in a post-EU UK. At the time of first submitting this report, Disability Rights UK and its membership had secured broad agreement to these demands and subsequent recommendations from the following organisations within the disability sector:

* Action on Disability
* CHANGE
* Community Navigator Services
* Disability Action Northern Ireland
* Disability Wales
* Disire (new EU citizens’ DPO)
* Leicestershire Centre for Integrated Living
* Leonard Cheshire
* Lives Unlimited
* National Survivor User Network
* Scope
* Shaping Our Lives
* SPECTRUM CIL
* Spinal Injuries Association
* York Independent Living Network

We subsequently received additional support for the Manifesto from other key DPOs including Breakthrough UK, Inclusion Scotland, Independent Lives and Real.

We have shared our top priorities with various alliances and groupings of disability organisations seeking to influence policy, including groups convened by our Ambassador Lord Colin Low (disability fight back group) and Baroness Jane Campbell (independent living strategy group) and the Reclaiming our Futures Alliance.

We have used our Manifesto to make links with expert advice and calls from other social justice organisations. We have shared our agenda with other groups and networks pressing for a fair Brexit, including the EHRC, the Equality and Diversity Forum and TUC and we have agreed to reinforce each other’s messages wherever we agree. Our conclusions correlate strongly with both the EFD’s position and the EHRC’s 5-point plan ‘Healing the divisions: a positive vision for equality and human rights in Britain’ [www.equalityhumanrights.com/en/publication-download/healing-divisions-positive-vision-equality-and-human-rights-britain](http://www.equalityhumanrights.com/en/publication-download/healing-divisions-positive-vision-equality-and-human-rights-britain).

**Our Manifesto for disability rights in a post-EU UK**

* **All EU-based disability rights existing at the time the UK leaves the EU to be maintained**, including those in relation to air and ship travel, web accessibility, accessible goods and services, public procurement and manufactured goods
* **Maintenance of existing disability rights which are incorporated in domestic law at the time of exit,** including primary legislation remaining unchanged unless there has been detailed parliamentary scrutiny (i.e. no Henry VIII clauses which would permit change without scrutiny); and secondary legislation to be left in place with no watering down and no inadvertent discarding of, for example, disability equality rules and regulations as ‘red tape’
* **Continued Government commitment to the UK being ahead of the curve on disability rights** – fully committing to implementing standards equivalent to the new European Accessibility Act once passed, building human rights clauses into future trade agreements and at least matching future progressive developments in EU disability rights law
* **At least matching current EU funding in real terms of DPOs and disability rights** – this includes matching by the UK government of all EU funding that supports a) disabled people’s voice and participation, including employment support b) independent living

c) other UN Convention rights and d) research on issues of importance to disabled people - with particular attention given to parts of the UK where loss of EU funding will damage the DPO sector

* **A full equality impact assessment by Government of plans for freedom of movement**, before those plans are agreed, ensuring no disproportionate impact on a) disabled EU citizens living in the UK b) carers c) disabled British citizens living in other EU countries and d) no detrimental impact on disabled people’s independence through reducing the PA workforce - this must involve detailed parliamentary scrutiny and public consultation on plans for EU citizens in the UK in terms of rules about ‘self-sufficiency’ and requirements for ‘comprehensive health insurance’
* **Continued mutual recognition initiatives useful to disabled people** - for instance badges to enable disabled people to park and cards offering other access and benefits
* **Giving the UNCRPD heightened status in domestic UK law** - increasing the influence and impact of the UNCRPD on tackling discrimination and advancing equality
* **Continued commitment to the European Convention on Human Rights**

We have also drawn up the following suggestions for effective future influencing on public debate and policy in relation to disability rights and Brexit and recommendations on what the disability sector most needs at this time:

1. Create and promote a ‘narrative’ that frames our demands in ways that resonate with the public, disabled people and policy makers, by:

* Drawing on the work of Equally Ours (part of the Equality and Diversity Forum) who have built an evidence base on how to frame human rights issues such that they are ‘heard’ as vital everyday concerns
* Echoing the EHRC call for a ‘fair Brexit’
* Encouraging all disability organisations to promote the narrative through all their networks
* Working with interested journalists to promote our narrative with wider audiences
* Building this narrative and these demands into the regular work of DPOs and disability organisations – so that our key demands on Brexit become part of campaigning platforms more broadly

1. Identify the most important people and bodies to influence, to include:

* Decision-makers and those that influence them: Secretary of State for Exiting the EU, Department for Exiting the EU, Senior Cabinet Ministers, Minister for Disabled People, civil service leads on Brexit and a) disability and b) equality
* Parliamentarians of all parties and parliamentary Committees with the potential to influence, including the All-party Parliamentary Group on Disability who can champion the issues; and in particular the Select Committee on exiting the EU, chaired by Hilary Benn MP, the Select Committee on Women and Equalities chaired by Maria Miller MP, and (on workforce issues) the Select Committee on Work and Pensions (chaired by Frank Field MP) and the Select Committee on Health (chaired by Dr Sarah Wollaston MP). Hilary Patrick also identifies Committees that may have an interest in changes to domestic law: the House of Lords Delegated Powers Committee, the House of Lords Committee on the Constitution, the Joint Committee on Human Rights and – if reforms are introduced by delegated legislation – the Joint Committee on Statutory Instruments and the House of Lords Merit Committee [[52]](#footnote-52)

1. Consider who is best placed to influence, for instance:

* People and organisations who are already influencing those decision-makers and may be willing to add our Agenda to their messages
* Disabled people and allies with links to decision-makers: for instance, the Disability Charities Commission has regular meetings with Ministers, and Jonathan Kay (referenced above) has briefed the Secretary of State for exiting the EU. Also, EU-level organisations of disabled people which are likely to have access to negotiators in the Brexit process (in particular the European Disability Forum).
* Direct voices of disabled people to convey the significance of the issues to real people’s lives
* Champions in Parliament, for instance disabled peers like Baroness Campbell and Lord Low, already raising disability implications of Brexit in the Lords
* Relevant think tanks and academics who may be influential
* Organisations that may ‘carry’ some of our message, e.g. trade unions, EHRC
* Bodies that may have leverage: for instance, might the EU consider requiring the UK to comply with high standards of accessibility, and disability employment, in order to trade with them? And could the European Disability Forum and MEPs help secure such a commitment?

1. Ensure continued, unified, focused campaigning to press Government to act on major human rights issues in order to stop Government from neglecting other major priorities because of the overwhelming emphasis on Brexit
2. Ensure regular cross-sectoral review and refinement of the strategy:

* Establish a steering group made up of DPOs and disability charities, including EU-level DPOs such as the European Disability Forum and the European Network for Independent Living.
* Track actions and outputs
* Review achievements and adjust plans as needed
* Ensure regular communications bulletins, that can go out from the widest range of disability organisations to their members and networks to sustain momentum – and where needed stimulate action (for instance, encouraging disabled people to visit their MPs locally to lobby for this agenda)

1. Compile a comprehensive list of all the mutual recognition initiatives that we want to be maintained and fill in any remaining research gaps, so it is clear for example what the current level of EU funding support is for DPOs and disability rights.
2. In the likely event of some former EU legislation being moved across to the devolved nations, specific support for DPOs in the devolved nations in their role of protecting disabled people’s rights.
3. Use opportunities for the disability sector to draw upon the UNCRPD to reassert and safeguard the freedom, purpose and action of voluntary sector disability organisations.

Achieving this will require support. The disability sector is very stretched, often subject to funding cuts or constraints; yet trying to address a wide agenda including the impact of social care and benefit funding restrictions, transport, employment and more. It would be extremely helpful if LEF or other committed funders were to consider creating a fund that could be used for collaborative, co-ordinated projects to:

1. engage grassroots DPOs – and disabled people – in knowing the disability rights implications of Brexit, being able to share experiences and stories, and to have a voice in the debate on Brexit – including talking with MPs, MEPs and other influencers at local, regional and national level
2. co-ordinate national UK level influencing: setting up a Steering Group, sustaining strong liaison across the disability sector and with ally equalities organisations, overseeing the development and testing of narrative development and co-ordinated use of messages, finalising the ‘manifesto’ and implementing an influencing strategy, based on a project plan detailing who needs to be influenced, how and who is best placed to do so.

It would be vital that the resource is used for co-ordinated activity. Several disjointed national activities, for instance, would risk diluting impact.

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.

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2. Britain Thinks (2017): A Survival Guide. Learning from Brexit and Trump to help you succeed in a changing world. [↑](#footnote-ref-2)
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4. Cited in The Observer 9 April 2017 [↑](#footnote-ref-4)
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6. Jonathan Kay (2017) Disabled people and Brexit – an impact overview [↑](#footnote-ref-6)
7. See above [↑](#footnote-ref-7)
8. <http://blogs.ncvo.org.uk/2016/12/16/what-do-we-know-about-charities-and-the-european-union/> [↑](#footnote-ref-8)
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10. <http://ec.europa.eu/justice/discrimination/files/swd_2014_182_en.pdf> . [↑](#footnote-ref-10)
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12. Directive 2000/78/EC. [↑](#footnote-ref-12)
13. Regulation 2006/1107/EC [↑](#footnote-ref-13)
14. Directive 2004/27/EC. [↑](#footnote-ref-14)
15. Directive 2014/23/EU; Directive 2014/24/EU; and Directive 2014/25/EU. [↑](#footnote-ref-15)
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