



Relate

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The journal of developments in social services, policy and legislation in Ireland

Disability legislation update

In March 2018, the Irish Government stated that it planned to ratify the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). This issue of *Relate* looks at the provisions of the UNCRPD and the impact it is likely to have in Ireland.

Ireland will need to meet its obligations under the UNCRPD from the date of ratification. As such, Ireland could not ratify the UNCRPD without enacting several pieces of new legislation and amending existing legislation.

United Nations Convention on the Rights for Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is an international treaty that sets out minimum rights and entitlements for people with disabilities in countries that have ratified the treaty. Ireland signed the UNCRPD in March 2007. By signing the treaty, Ireland is obliged not to act in any way that is contrary to the aims and purpose of the treaty.

On 7 March 2018, the Government passed a motion to ratify the UNCRPD, therefore agreeing that it will be bound by the terms and obligations contained in the treaty. On 20 March 2018, Ireland deposited the ratifying instrument with the Secretary General of the United Nations. Thirty days later, on 19 April 2018, the Convention comes into force in Ireland.

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UNCRPD Optional Protocol

While Ireland is ratifying the UNCRPD, the Government is not currently undertaking to ratify the Optional Protocol to the UNCRPD. The Optional Protocol allows individuals to make complaints against Ireland at the UN Committee on the Rights for Persons with Disabilities. The Government previously committed to ratifying the Optional Protocol in a *Roadmap to Ratification of the UNCRPD* in 2015 at the same time as the UNCRPD. However, the commitment is now to get the UNCRPD ratified first, and look at the Optional Protocol at a later stage. Therefore, individuals with disabilities will not be able to make individual complaints to the UN Committee upon Ireland's ratification of the Convention itself.

The Committee on the Rights of Persons with Disabilities

A committee is responsible for ensuring that the Convention is being followed properly by all countries that have ratified the Convention. The Committee on the Rights of Persons with Disabilities has 18 experts nominated from ratifying countries.

Each country must write a report about their progress under the Convention and submit it to the Committee within two years of ratifying the Convention. After that, each country sends a report every four years, as well as any extra reports as required by the Committee. The Committee will review the reports and provide countries with recommendations. All countries may review the reports of other countries. In addition, countries must make their report publicly accessible, along with the Committee's responses.

The Committee may also ask human rights organisations to write reports about how their work supports the terms of the Convention.

The Committee will report every two years to the General Assembly of the United Nations and the Economic and Social Council on its activities and may make suggestions and general recommendations based on the examination of reports and information received from each country.

Principles of the UNCRPD

Census 2016 showed that 643,131 people in Ireland live with a disability.

Under the UNCRPD, people with disabilities include people with long-term physical, mental, intellectual or sensory impairments that may hinder their participation in society on an equal basis with others. The purpose of the UNCRPD

is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all people with disabilities.

The guiding principles of the Convention include: respect, non-discrimination, equality and the full and effective participation of people with disabilities in society.

The UNCRPD is made up of 50 separate articles covering a wide range of areas including:

- Health
- Education
- Employment
- Access to justice
- Liberty and personal security
- Independent living
- Access to information

Health

Under Article 25 of the UNCRPD, Ireland must take all necessary steps to ensure people with disabilities enjoy the highest attainable standard of health without discrimination on the basis of disability.

Ireland must ensure that:

- People with disabilities have access to the same range, quality and standard of free or affordable health services as others, including family planning services
- People with disabilities get the health services they need because of their disability, including early identification and intervention
- Health services are provided as close as possible to where people live, including rural areas
- Health professionals give the same service to people with disabilities as to others
- People with disabilities are not discriminated against in health and life insurance
- People are not refused care or treatment because they have a disability

Ireland must ensure disabled people can lead as independent and healthy a life as possible and provide services to support this goal. To achieve this, Ireland must improve its habilitation and rehabilitation services and programmes. Habilitation refers to a process aimed at helping disabled people attain, keep or improve skills and functioning for daily living. Rehabilitation refers to regaining skills, abilities or knowledge that may have been lost or compromised as a result of acquiring a disability or due to a change in one's disability or circumstances.

Education

Under the UNCRPD, Ireland must ensure people with disabilities have the opportunity to go to quality mainstream schools as part of an inclusive education system.

Ireland must make sure people with disabilities:

- Are able to develop their skills and abilities
- Are not excluded from any sort of education
- Have their needs met as far as possible including reasonable accommodation of their requirements
- Get proper support to learn, including any necessary individualised supports

Ireland must ensure that people with disabilities have the opportunity to learn life and social development skills so they can fully and equally participate in their communities. Ireland must support people learning Braille, Sign Language and other ways of communicating. Ireland must also take steps to employ teachers, including teachers with disabilities, who are qualified in Sign Language and/or Braille.

Training around disability awareness and the use of appropriate means and formats of communication and teaching to support people with disabilities should be provided to education professionals and staff.

Employment

People with disabilities have an equal right to work. This includes the right to the opportunity to gain a living by work, freely chosen or accepted in a labour market, and a work environment that is open, inclusive and accessible.

Ireland must safeguard and promote the employment rights of people with disabilities by making laws that prohibit discrimination in all employment matters including recruitment, employment and career advancement.

These legislative and policy measures should ensure that people with disabilities:

- Have the same conditions of work as others, including opportunities, pay, health and safety conditions, protection from harassment and redress of grievances
- Have a right to join a trade union
- Can go on work programmes, placement and work training
- Have assistance in finding and keeping jobs and to get better jobs
- Have assistance and support in setting up their own businesses

- Are employed in the public sector
- Are more easily employed within the private sector through appropriate measures such as affirmative action programmes and other incentives
- Can benefit from reasonable accommodation being provided for them in the workplace

Access to justice

Countries that have ratified the UNCRPD recognise that all persons are equal before and under the law and are entitled to the equal protection and equal benefit of the law without any discrimination. Under Article 13, Ireland must take all appropriate steps to ensure reasonable accommodation for people with disabilities is made within the justice and legal systems.

Ireland must take all appropriate measures to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against people with disabilities.

Under the UNCRPD, people with disabilities have the right to make their own decisions and have legal capacity in the same way as everyone else. Ireland must provide any necessary supports to ensure that people with disabilities have these rights.

Ireland must also have appropriate and effective safeguards to ensure that measures relating to the exercise of legal capacity:

- Respect the rights, will and preferences of the person
- Are free of conflict of interest and undue influence
- Are proportional and tailored to the person's circumstances
- Apply for the shortest time possible
- Are subject to regular review by an independent authority

People with disabilities must have equal rights to:

- Own, inherit or be given property
- Control their own money
- Borrow money in the same way as other people
- Not have their homes or money taken away from them

People with disabilities must also have the same rights as anyone else to go to court, take other people to court or take part in court activity, including through the provision of procedural and age-appropriate accommodations. Ireland must promote appropriate training for courts, police and prison staff.

Liberty and personal security

People with disabilities should enjoy the same level of freedom and safety as everyone else. They should not be detained unlawfully or arbitrarily and the existence of a disability shall not justify a deprivation of liberty. If people with disabilities are detained, they should be treated as any other person under the law and in accordance with guidelines under the UNCRPD, such as given reasonable accommodation.

Independent living

Under the UNCRPD, Ireland must ensure that people with disabilities have the same choices as everyone else about how they live and how they interact with their communities. Ireland must take effective and appropriate measures to ensure that people with disabilities enjoy these rights, along with full inclusion and participation in the community.

Under the UNCRPD, people with disabilities can choose:

- Where and with whom they live and are not obliged to live in a particular living arrangement
- From a range of different in-home, residential and community support services, including personal assistance
- From the same range of services as other people, and can expect those services to be responsive to their needs

Ireland must also take steps to make sure people with disabilities can get around as independently as possible. These steps may include facilitating the personal mobility of people with disabilities through quality mobility aids and affordable assistance.

Ireland should make sure people with disabilities have better access to the physical environment, transportation, information and communications in urban and in rural areas. Signs should be in easy-read format and in Braille, and more guides and sign language interpreters should be made available in public buildings and facilities.

Ireland must publish and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.

Access to information

Ireland must ensure that people with disabilities can exercise their right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas, in the same way as everyone else. This includes providing information in accessible

formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost, such as Braille or Irish Sign Language.

All countries that have ratified the UNCRPD should encourage private businesses that provide services to the public, including through the internet, to provide information and services in accessible and usable formats for people with disabilities.

Implementation of UNCRPD in Ireland

Countries that have ratified the UNCRPD should have one area of government dealing with matters relating to its implementation, and all other areas of government should co-ordinate with this area.

Countries must have a framework, including one or more independent mechanisms, to promote, protect and monitor the implementation of the Convention. Citizens, particularly people with disabilities and their representative organisations, should be involved and should participate fully in this monitoring process.

In Ireland, the main policy objective for people with disabilities is that people should be supported to lead full and independent lives, to participate in work and society and to maximise their potential. The Government has set out plans to achieve these objectives in various policies and strategies including the *National Disability Inclusion Strategy 2017–2021* and the *Comprehensive Employment Strategy for People with Disabilities 2015–2024*. These strategies and policies are underpinned by a range of existing legislation - described below. In addition, several pieces of upcoming legislation aim to ensure that Ireland's obligations under the UNCRPD are fully met - also described in more detail below.

Disability Act 2005

Part 2 of the Disability Act 2005 provides for a statutory assessment of need process. People who are of the opinion that they might have a disability (or certain others on their behalf) have the right to:

- Apply for an assessment of individual needs, which is carried out without regard to the cost of or the capacity to provide service identified in the assessment
- A related service statement

- Access to an independent redress and enforcement process

All children born after 1 June 2002 can apply to the Health Service Executive for an assessment under Part 2 of the Disability Act. Parents, legal guardians or personal advocates can apply on a child's behalf. From 1 June 2018, a young person aged over 16 years will be able to apply for an assessment of need.

Disability (Miscellaneous Provisions) Bill 2016

The Disability (Miscellaneous Provisions) Bill 2016 makes a number of changes to ensure Ireland is compliant with the UNCRPD. The Bill provides a statutory basis for the Irish Human Rights and Equality Commission (IHREC) in the monitoring framework for Ireland's compliance with the UNCRPD. It also requires that the IHREC sets up a specific advisory committee with a representation of people with disabilities. Other provisions include:

- A support monitoring role by the National Disability Authority
- An amendment to the Juries Act 1976 so that a person who is deaf is not deemed ineligible from jury service only by the fact that they require ISL interpretation
- Bringing Gardaí civilian staff into the 3% target for employees with disabilities, which is back within the terms of Part 5 of the Disability Act 2005
- An amendment to equality legislation to explicitly prohibit discrimination against transgender people
- Repealing prohibition of person of "unsound mind" from standing for elections, therefore amending the Electoral Act 1992

The Bill is currently at Committee Stage.

National Disability Inclusion Strategy

In July 2017, the Government launched the *National Disability Inclusion Strategy 2017–2021*.

The Strategy contains 114 separate actions including the following:

- Introducing legislation for the improvement of Irish Sign Language use and accessibility (see page 7)

- Introducing reforms to improve the areas of work and employment for people with disabilities, including the implementation of the *Comprehensive Employment Strategy for People with Disabilities*
- Developing proposals to address access to and affordability of aids, appliances and assistive technologies required for everyday living by people with disabilities
- Developing proposals and schemes aimed at improving the ability to travel for people who are mobility impaired
- Developing codes of practice to support the implementation of the Assisted Decision-Making (Capacity) Act 2015 (see page 6)
- Implementing fully the Access and Inclusion Model (AIM) of supports for children with disabilities to allow every child to participate in the Early Childhood Care and Education Scheme (ECCE) (see page 7)
- Implementing fully the Transforming Lives programme and related policies

The Strategy is available online at justice.ie.

Comprehensive Employment Strategy for People with Disabilities

In October 2015, the Government launched the *Comprehensive Employment Strategy for People with Disabilities 2015–2024*. This Strategy sets out a 10-year approach to ensure that people with disabilities who are able to work, and want to work, are supported and enabled to do so. The Strategy is a cross-government approach to address the barriers and challenges that impact the employment of people with disabilities.

The Strategy's six priority areas are to:

- Build skills, capacity and independence
- Provide bridges and supports into work
- Make work pay
- Promote job retention and re-entry to work
- Provide co-ordinated and seamless support
- Engage employers

The Strategy is available online at justice.ie.

Employment Equality Acts 1998 to 2015

Discrimination in the workplace is illegal in Ireland under the Employment Equality Acts 1998 to 2015. These Acts outlaw discrimination in a wide range of areas, including

recruitment and promotion, equal pay, working conditions, training or experience, dismissal and harassment. The Acts define discrimination as treating one person in a less favourable way than another person.

Employers are obliged to make reasonable accommodation for staff with disabilities. This includes providing adapted workplaces and access to employment, enabling people with disabilities to participate in fully employment.

The Workplace Relations Commission is the body responsible for hearing claims under the Employment Equality Acts 1998 to 2015.

The Employment Equality Acts and the Equal Status Acts (which prohibit discrimination in circumstances outside of the workplace) aim to meet the UNCRPD requirements of equality and the elimination of discrimination.

Housing policy for people with disabilities

The *National Housing Strategy for People with a Disability 2011–2016* was published in October 2011, followed by the *National Implementation Framework for the Strategy* in July 2012. These documents set out the Government's previous framework for the delivery of housing for people with disabilities through mainstream housing options. This Strategy was discussed in more detail in the March 2012 issue of *Relate*.

Rebuilding Ireland: Action Plan for Housing and Homelessness is the Government's current housing policy, and was published in July 2016. *Rebuilding Ireland* aims to:

- Provide for the needs of older people or people with a disability living in social housing
- Provide targeted support to owner-occupier homes, via the Housing Adaptation Grant, Housing Aid for Older People and Mobility Aids Grant
- Enable older people and people with disabilities to remain living independently in their own homes for longer and also to facilitate early return from hospital stays
- Continue to support the transitioning of people with disabilities from congregated settings to community-based living, through ring-fenced housing capital provision

Rebuilding Ireland is discussed in more detail in the February/March 2018 issue of *Relate*.

Assisted Decision-Making (Capacity) Act 2015

The Assisted Decision-Making (Capacity) Act 2015 provides a statutory framework for people to be assisted and supported in making decisions about their health, welfare and property in legally binding agreements. This assistance is particularly needed where the person lacks or may lack the capacity to make such decisions by themselves.

The Act also sets out new arrangements for wards of court and for people who wish to make an Enduring Power of Attorney.

The Decision Support Service has been established within the Mental Health Commission to provide a range of functions in relation to these new arrangements. An expert committee formed by the National Disability Authority has drawn up draft codes of practice in relation to the decision-making assistance roles as required by the Act.

This Act aims to achieve several of the requirements contained in the UNCRPD including:

- General principles of respect, dignity and individual freedom to make one's own choices
- The right to equal recognition before the law and equal access to justice
- The right to enjoy legal capacity on an equal basis with others
- The safeguarding of people with disabilities from abuse and unlawful detention
- The equal right to own and inherit property and to have control of one's financial affairs

The Assisted Decision-Making (Capacity) Act 2015 has not been fully commenced and the Decision Support Service is not yet operational.

Citizens Information Act 2007

The Comhairle Act 2000 and the Citizens Information Act 2007 give the Citizens Information Board a mandate to provide advocacy services for people with disabilities. Advocacy enables people to seek and receive information, explore and understand their options, make their wishes and views known to others and make decisions for themselves. An advocate will ensure that when life decisions are made, due consideration is given to the will and preference of people with disabilities and that their rights are safeguarded. The National Advocacy Service

for People with Disabilities (NAS) has a particular remit for adults with disabilities who are isolated from their community and services, have communication differences, are inappropriately accommodated, live in residential services, attend day services and have limited informal or natural supports. More information on NAS is available at citizensinformationboard.ie

Education policy for people with disabilities

Access and Inclusion Model (AIM)

The Early Childhood Care and Education (ECCE) Scheme provides early childhood care and education for children aged over three years and up to five and a half years.

The State pays a capitation fee to participating playschools and daycare services that in turn provide a pre-school service free of charge to all children for a set number of hours over a set period of weeks.

A new Access and Inclusion Model (AIM) was introduced in June 2016 for children with disabilities starting ECCE. AIM supports a child-centred model involving seven levels of progressive support, moving from universal to the targeted, based on the needs of the child and the pre-school provider.

Education for Persons with Special Educational Needs Act 2004

The Department of Education and Skills provides for the education of children with special educational needs through a number of support mechanisms. Children with special educational needs have the right to free primary education up to the age of 18.

Section 2 of the Education for Persons with Special Educational Needs Act 2004 requires that a child with special educational needs should be educated in an inclusive environment with children who do not have such needs unless the nature or degree of the child's needs means that to do so would be inconsistent with:

- The best interests of the child as determined by assessment
- The provision of education for other children with whom the child is to be educated

Where placement in an integrated setting is considered to be appropriate, provision will normally take the form of resource teaching or special needs assistant support, or both, depending on the child's assessed level of need.

Children with more severe levels of disability may require placement in a special school or special class attached to a mainstream primary school. Pupils attending these facilities attract special rates of capitation funding and can use the special school transport service and the school bus escort service.

Under the Education for Persons with Special Educational Needs Act 2004, each child assessed with a special educational need should have a personal education plan. However, the provisions relating to assessment of special educational need have not been commenced. This means that the only statutory right to an assessment of need process available to a child with a disability is an assessment under the Disability Act 2005 (see page 4).

Deprivation of liberty legislation

The existing legislation in the area of legal incapacity includes the Assisted Decision-Making (Capacity) Act 2015 and the Mental Health Act 2001. The Mental Health Act 2001 provides for, among other things, rules about admission to psychiatric hospitals and rules about the rights of psychiatric patients. People have the right to be treated with dignity and respect. They have the right to be fully informed about their legal rights, their admission and treatment. However, these acts do not provide a procedure for admitting persons without capacity to facilities in which they will be under continuous supervision and control and will not be free to leave. These acts also do not provide procedural safeguards to ensure that such persons are not unlawfully deprived of their liberty. The Government originally intended to introduce the deprivation of liberty provisions in the Disability (Miscellaneous Provisions) Bill 2016 as amendments at Committee Stage. However, the Government announced that it would instead deal with the issue in a stand-alone Bill and intends this will be a new part of the Assisted Decision-Making (Capacity) Act 2015.

The Assisted Decision-Making (Capacity) Act 2015, as amended, aims to ensure people with disabilities are not unlawfully or arbitrarily detained, which is a requirement under Article 14 of the UNCRPD.

Irish Sign Language Act 2017

The *2011 HSE National Audiology Review* estimated that approximately 8% of the adult population has a permanent acquired hearing loss of a significant degree. In the over 70 age group, that percentage rises to 50%. This means almost 250,000 adults in Ireland have a permanent hearing impairment.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through citizensinformation.ie, the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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Irish Sign Language (ISL) is the primary and/or preferred mode of communication of the Deaf community in Ireland.

The Irish Sign Language Act 2017 was enacted on 24 December 2017. Under the Act, the State recognises the right of users to name ISL as their native language. All Irish public bodies will provide ISL users with free interpretation whenever they are using State services.

The Act has not been commenced but this must be done within three years from 24 December 2017.

Use in legal proceedings

A person may use ISL in any court of law. Every court is obliged to do all that is reasonable to ensure that any competent ISL user, who cannot hear or understand English or Irish, may be heard using ISL if that is their choice. Such a person should not be placed at any disadvantage.

Educational supports

Census 2011 showed that 44% of deaf/hard of hearing adults had completed no higher than primary-level education compared with 12% for the general population.

Under the Act the Minister for Education and Skills will:

- Establish a scheme for the provision of ISL classes to parents, siblings and grandparents of a child who is deaf, including guardians and those in loco parentis
- Establish a scheme to provide ISL support for children attending publicly funded schools whose primary language is ISL
- Ensure third-level teacher training courses have sufficient placements providing ISL training for teachers as well as minimum qualifications for teachers of children who are deaf or hard of hearing

Grants are currently available for families of deaf or hard of hearing children for ISL tuition. ISL courses are offered by several organisations including the Irish Deaf Society (Deaf Adult Literacy Services), IrishDeaf.com, the Centre for Sign Language Studies in Galway, Cork Deaf Association, and Deaf Community Centre in Limerick. Courses are also offered by several colleges of further education.

Duty of public bodies

Public bodies must do all that is reasonable to provide interpretation into ISL for any person who is competent in that language and cannot hear or understand English or Irish when that person is accessing the services or entitlements provided by that public body. This interpretation will be provided at no cost to the individual. You may need to give notice to the public body within a certain amount of time beforehand. The interpretation may be provided via a remote, web-based service if the ISL user agrees to this. For further information see CIB Research Series *Information provision and access to public and social services for the Deaf Community* published in December 2017. This report is available online at bit.ly/2Hkalz6.

Broadcasting

In August 2016, the Broadcasting Authority of Ireland published updated *Access Rules*, which set out what percentage of programming on each television channel should have subtitling, sign language or audio description. For example, RTÉ One is required to reach a subtitling target of 87-92% by 2018, as compared with 82-87% in 2014.

Support and access

The Minister for Employment Affairs and Social Protection may provide funds to facilitate users of ISL in accessing social, educational and cultural events and services (including medical) and other activities. The Government will publish guidelines that will specify the events, services and activities to which this provision refers.

Relate online survey

We are carrying out a survey to find out what you think of *Relate*, and how you think it might be improved. The survey is open until 16 May 2018 and is anonymous and confidential. It should take no longer than 3 minutes. Please visit the following link to complete it: surveymonkey.com/r/Relate2018

The information in *Relate* is intended as a general guide only and is not a legal interpretation