



INCLUSION IRELAND

National Association for People with an Intellectual Disability

Pre-Budget Submission 2019

Department of Justice and Equality

August 2018

This document is written in font 12 Verdana in line with Inclusion Ireland plain English guidelines.

About Inclusion Ireland

Established in 1961, Inclusion Ireland is a national, rights based advocacy organisation that works to promote the rights of people with an intellectual disability.

The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights as citizens.

Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy.

Public Sector Duty

In the most recent strategy statement, the Department of Justice notes its obligations under Section 42 of the Irish Human Rights and Equality Commission Act, 2014. The Department states the duty is "consistent with the core functions and values of the Department" and that "the Department screens all draft legislation from a human rights and equality perspective."

Inclusion Ireland would encourage the Department to ensure that all decisions made for Budget 2019 are in line with this duty by being proactive in promoting equality; ensuring human rights are realised and eliminating discrimination.

About this Submission

Inclusion Ireland held consultations in Cork, Tullamore & Sligo as well as an on-line survey with respondents from all 4 provinces of Ireland. People with a disability, their family members and people who work in disability all took time to complete the survey.

Inclusion Ireland is moving towards complete accessibility of its work and this document contains an easy to read summary at the start.

Easy to read summary



AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAIS
DEPARTMENT OF JUSTICE AND EQUALITY



The Department of Justice and Equality is an important Government Department.

It is responsible for making sure Ireland is a safe, fair and inclusive place to live.

What is the Budget?

The Budget is the Government plan of how money will be spent for the coming year.

Inclusion Ireland is asking the Department to look at 4 areas.

1. Assisted Decision-Making

We are asking the Government to make money available to fully set up the Decision Support Service (DSS) as soon as possible.

2. The UNCRPD and Funding Disabled Persons Organisations

We are asking for the Government to provide funding for Disabled Persons Organisations so that persons with disabilities will have their say on the implementation of the UNCRPD.

3. Reasonable Accommodation

We want the Government to set up a scheme that would encourage private businesses to accommodate persons with disabilities.

4. Participation of people in decision-making

We want the Government to provide funding for the Plan for Effective Participation to be rolled out.

This means putting aside funding for advocacy groups to be set up around the country.

Introduction

In the Programme for Partnership Government, there is a commitment to Eliminate any persisting discrimination on the nine grounds,

- Equality of opportunity,
- Supporting persons with disabilities in maximising their potential,
- Removing barriers which impact on access to services, education, work or healthcare,
- Targeted improvements in welfare

Inclusion Ireland believes that persons with disabilities should live self-determined lives and Budget 2019 provides an opportunity to create a more equal & just society and to develop pathways into a life in the community for people with a disability.

Inclusion Ireland has identified 4 areas of reform for Budget 2019 that fall within the remit of the Department of Justice and Equality. These are

1. Assisted Decision-Making
2. The UNCRPD and Funding Disabled Persons Organisations
3. Reasonable Accommodation
4. Participation of people in decision-making

1. Assisted Decision-Making

The Assisted Decision-Making (Capacity) Act 2015 was enacted at the end of 2015. Full commencement is the next critical step to ensure that individuals with disabilities have the support to exercise decision-making and choice in their lives. The National Disability Inclusion Strategy commits to establish the DSS in 2017 and to commence the Assisted Decision-Making (Capacity) Act, to develop the associated Codes of Practice, and to promote and provide training in early 2018.

The Decision Support Service was established in October 2017, and a Director has been appointed. It is essential that the Director is given adequate resources to execute her functions including promoting public awareness, to provide information, to supervise compliance by decision-making assistants, co-decision-makers, decision-making representatives and attorneys and carrying out investigations.

The Decision Support Service (DSS) is situated within the Mental Health Commission (MHC) and this was an important process while the DSS was being established as many of the functions of the MHC and DSS are similar, as the rights-based approach of the MHC was preferable to the more adversarial courts system that had been proposed.

It is now essential that the Decision Support Service should become an independent body in its own right. There is potential for a DSS to perform a function with mooted Safeguarding Legislation as well as any broader national advocacy service that is established. The DSS should also stand alone in order to reflect the 'disability neutral' nature of the law.

Part 6 of the Assisted Decision-Making Act, involves a review of people who are currently Wards of Court. A report of the Public Accounts Committee¹ found that some Wards of Court's had individual funds were severely depleted in value during the financial downturn and recommended contingency plans for those with depleting funds. Budget 2019 should provide resources for the review of wards on an individual basis and necessary financial, health and social care supports as required.

¹ Public Accounts Committee Report on the Wards of Court July 2015

An amendment to the Assisted Decision-Making Act is being developed in order to create Part 13- Deprivation of Liberty. This part will create safeguards to ensure that persons are not unlawfully deprived of their liberty. It is important that in the development of the Deprivation of Liberty Safeguards, that people with disabilities are consulted with.

What people said in our consultation about Assisted Decision-Making

"I had no choice whenever I left school only to go to day centre where I could work for very low pay. Little or no choice and little or no pay."

Inclusion Ireland asks for Budget 2019 on Assisted Decision-Making

- Ensure that the necessary funds are made available to the Director to fully establish the DSS at the earliest opportunity.
- Ensure the Decision Support Service is adequately staffed to carry out its myriad functions including public awareness.
- People with disabilities are consulted with in the development of the Deprivation of Liberty Safeguards.
- Individual reviews of wards of court are carried out to ascertain loss to funds and identify support needs.

2. Monitoring the UNCRPD / Funding Disabled Persons Organisations

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) is to be monitored by the Irish Human Rights and Equality Commission. As the body responsible for monitoring Ireland's performance with other UN instruments, it is important that the UNCRPD takes input from people with disabilities in monitoring the Convention.

It is proposed that a committee of persons with lived experience of disability will support the work of the Irish Human Rights and Equality Commission in monitoring the implementation of the of the UNCRPD. This committee should be adequately resourced, the members remunerated and appropriate supports put in place for those participating.

The UNCRPD places a responsibility on the State to ensure that individuals with disabilities and disabled persons organisations (DPOs) fully participate in the implementation of the Convention. Currently, there is no funding provided by the State to DPOs in Ireland and as a result, many of these organisations, that are led by persons with disabilities lack the resources they would need to fully participate in this process.

People in our consultations were very engaged in what the UNCRPD is and what it means for people with disabilities. Here is what they had to say:

"The government should invest more in supporting people to live independently in the community".

"Provide proper healthcare services for people with disabilities; provide occupational therapy, physiotherapy, speech therapy. Bring equality to Disability."

"More inclusion with regards to job opportunities and equality all around have a user friendly Budget for individuals."

"More accessibility on public transport."

"The Government should address employment for people with a disability and give them proper wages and get them out of services and live a good life with good support."

Inclusion Ireland asks for Budget 2019 on monitoring the UNCRPD/ Funding Disabled Persons Organisations

- The Irish Human Rights & Equality Commission should establish a UNCRPD advisory committee.
- Funding for DPOs should be provided so that persons with disabilities will have input in the implementation of the UNCRPD.

3. Reasonable Accommodation by Providers of Goods & Services

Reasonable Accommodation is an essential requirement for the participation of persons with disabilities. According to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), reasonable accommodation means “necessary and appropriate modification and adjustments” which do not impose a “disproportionate or undue burden” with the purpose of ensuring that persons with disabilities enjoy all human rights and fundamental freedoms on an equal basis with others.

In Ireland, there are apparent constitutional issues and a conflict with the constitutional right to own private property and, as a result, reasonable accommodation where the cost was no more than a nominal cost has been the standard in Ireland.²

The EU Employment Equality Directive³ set the standard at a higher disproportionate cost in respect of employment only and the Department of Justice has indicated that this higher standard may also be extended to the provision of goods and services from public sector bodies.⁴ Private providers of goods and services will not be required to reasonably accommodate beyond nominal cost. This is lower than the UNCRPD standard.

² The Supreme Court decided in the Article 26 referral of the Employment Equality Bill 1996 that it would be unconstitutional to impose such a requirement where the cost exceeds a nominal cost.

³ Council Directive 2000/78/EC of 29 June 2000

⁴ Disability (Miscellaneous Provisions) Bill 2016 Explanatory Memorandum

The prioritisation of reasonable accommodation measures is necessary for persons with disabilities to get and keep jobs and is required under law.⁵ The 'Reasonable Accommodation Fund' for People with Disabilities is a demand-led scheme and part of the Comprehensive Employment Strategy for People with Disabilities⁶.

The fund is designed to support persons with disabilities to access further training and employment opportunities but it has been very under-utilised in recent years with the amount spent decreasing annually. In 2013 there was a drawdown of €112,017, while in 2016 it was only €77,822 and so far in 2018 just €55,009 has been spent⁷.

No 'Employee Retention Grants' have been drawn down in 7 years and it is unclear what is being done to raise public, employer and employee awareness of both this fund and the Reasonable Accommodation Fund. Because the scheme is demand-led, it does not encourage pro-activity on the part of employers and it is not advertised widely. A similar fund for service providers could be considered to support private enterprise in providing reasonable accommodations to the higher standard.

What people said in our consultation about reasonable accommodation;

"Disability awareness training for all public employees"

"Better access to training and employment supports"

"The government needs to put money into publicising disability focussed services to support access to those services."

"Sensory equipment is so expensive. There should be a regulation on the mark up on them."

"Equal opportunities and support to employment."

"There should be more courses available that lead to proper paid employment ... Employers should be given incentives to take on individuals with intellectual disability and they should have a support colleague in work."

⁵ Employment Equality Acts & United Nations Convention on the Rights of Persons with Disabilities.

⁶ Action 3.2

⁷ Minister Doherty, Written Answer [25834/18]

Inclusion Ireland asks for Budget 2019 on reasonable accommodation

- Develop a scheme akin to the “Reasonable Accommodation Fund” to support private enterprise to put in place adjustments or modifications to ensure that their business can take steps to reasonably accommodate at the standard of the UNCRPD.
- Invest in an advertising campaign through the Irish Human Rights & Equality Commission to promote easy steps towards reasonable accommodation.

4. Participation of People with Disabilities in Decision-Making

‘Transforming Lives’ is the programme to implement the changes informed by the recommendations of the report Value for Money and Policy Review of the Disability Services in Ireland (2012). There were several Working Groups established under a National Steering Group including Working Group 3 in the area of people with disabilities and community involvement.

In 2015, Working Group 3 began work on a plan for ‘Effective Participation in Decision Making for People with Disabilities and Families’. This plan will be published by the HSE shortly and sets out what needs to happen in order for people with disabilities to be involved in a meaningful way in decisions that impact their lives directly.

What people said in our consultation about participation of people in decision-making:

“It's important that people know where to find advocates, as they might not be able to speak up. More advertising or publicity needed for better awareness.”

“Person should be able to stay in their own community.”

“I spend my money on my own activities, I have access to money in the bank when I need it and that is really important to me, many people do not have this because they are not trusted with money”

Inclusion Ireland asks for Budget 2019 on participation of people with disabilities in decision-making

- General funding allocated to the HSE and government departments to implement Ordinary Lives in Ordinary Places, including resources for dedicated staff, training materials and roll out. Ring-fenced funding for the development of advocacy structures such as the National Platform of Self Advocates.
- Funding for nationwide consultation forums made up of persons with disabilities.
- Funding for nationwide consultation forums made up of family members.

Conclusion

The Department of Justice and Equality has an important role to play in promoting equality and social inclusion for people with disabilities. The Department must ensure that the Decision Support Service is fully established at the earliest opportunity. This means providing the DSS and its Director with the necessary funds to achieve this.

As part of Ireland's ratification of the UNCRPD earlier this year, it is important that the Department ensures that the Irish Human Rights and Equality Commission (IHREC) form an advisory committee to assist the Commission in monitoring the Convention. The UNCRPD also places a requirement on the State to fund Disabled Persons Organisations. Both these actions would ensure that people with lived experience would have input into the implementation of the UNCRPD.

The Irish Human Rights and Equality Commission should start a promotional campaign highlighting the need for reasonable accommodation for people with disabilities. There should also be a scheme established to encourage private businesses to take steps to be in line with reasonable accommodation standards in the UNCRPD.

As part of the Transforming Lives programme for involving people with disabilities more in decision-making regarding their own lives, it is

important that funding is provided to the HSE and other Government Departments to implement Ordinary Lives in Ordinary Places. This involves ring-fencing money to develop advocacy structures, and to ensure that people with disabilities are consulted with around the country.

For further information contact;

Sarah Lennon, Communications & Information Manager, Inclusion Ireland.

01 855 98 91 / sarah@inclusionireland.ie