



**INCLUSION IRELAND**

National Association for People with an Intellectual Disability

**Briefing note relating to the  
ratification of the United  
Nations Convention on the  
Rights of Persons with  
Disabilities  
(UNCRPD)  
February 2018**

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## **The importance of the UNCRPD**

Human rights are critical to personhood, citizenship and humanity itself and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) was designed as a response to the unique barriers that our society throws up for persons with disabilities.

The UNCRPD challenges us to understand disability as a human rights issue and provides the framework to promote, protect and ensure the rights of all people with disabilities and promotes equal rights in all areas of life.

Ireland signed the UNCRPD in March 2007 with, the Minister for Justice Michael McDowell describing it as “a blueprint for a significant improvement in the lives of these people (disabled people).” Ireland is now the last remaining EU Member State to ratify the UNCRPD and clearly, the improvements were not considered to be of urgency.

The UNCRPD does not create new rights and the Irish Courts have already found that ‘personal capacity rights’ now fall to be informed by the UNCRPD which means that the rights of Irish Citizens should be viewed in the context of the UNCRPD. In many ways, the legislative provisions that have been identified as missing, outstanding or needing amendment are as important as the ratification itself. It is therefore regrettable that many of these legislative changes remain to be completed.

Ireland has indicated that it will also ratify the Optional Protocol of the UNCRPD which would allow individuals or groups of individuals to communicate with the Committee on the Rights of Persons with Disabilities about violations of the provisions of the UNCRPD. This is an important aspect of the Convention and can provide an important advocacy tool for people concerned with violations of their rights.

## **The delay in ratification**

Today’s motion to ratify, without having made the necessary legislative amendments, flies in the face of a decade of statements to the contrary.

Shortly after Ireland signed the UNCRPD in 2007, we quickly declared that as a dualist state, we were required to be in a position to meet the obligations assumed under the terms of an international agreement from the moment of its entry into force for Ireland.

Successive Ministers for Justice and junior Ministers, including most recently Minister McGrath<sup>1</sup> have stated “Ireland’s strong commitment to proceed to ratification as quickly as possible, taking into account the need to ensure all necessary legislative and administrative requirements under the Convention are met.”

In 2015, ‘A Roadmap to Ratification’ was produced, 8 years after signing, which showed the task at hand. Large volumes of legislative provisions were identified as non-compliant and progress has been slow.

A Disability (Miscellaneous Provisions) Bill 2016 was introduced by Minister McGrath with the purpose of amending a range of legislation so that Ireland could ratify the UNCRPD. The Bill sought to amend the Juries Act 1976, the Electoral Act 1992 and the Disability Act 2005 to remove discriminatory provisions.

Minister McGrath stated that “the enactment of the Bill will strengthen the position of people in this section of society even further.”<sup>2</sup> This Bill has not been passed and was sent to Select Committee over one year ago.

It is worrying that the legislative amendments have not been made and Ireland will not comply with the UNCRPD without entering significant declarations, reservation or interpretations and an explanation and apology is due for why this step to ratify ahead of legislative reform was not carried out a decade earlier. Additionally, a clear timetable for the legislative reform is needed. This legislative reform is examined in more depth, below.

## **Irish Compliance with the UNCRPD**

### Article 12 (Equal Recognition)

The Assisted Decision-Making Act 2015 was seen as a major piece of the jigsaw in Ireland’s readiness to ratify the UNCRPD. The ‘Roadmap to Ratification’ highlighted its importance in relation to Articles 3, 12 and 14. While Ireland enacted this law in 2015, it has only partially commenced and the substantive part of the legislation remains un-commenced.

Ireland still has the Lunacy Act 1871 on Statute, which is a Victorian-era law that underpins the ‘wards of court’ system. This Act is unlikely to be repealed in 2018 and the review of wards of court is subject to a 3-year review process after its repeal.

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<sup>1</sup> PQ Wednesday, 20 September 2017

<sup>2</sup> Dáil Éireann debate - Tuesday, 31 Jan 2017

Ireland will be in grave violation of Article 12 while the Lunacy Act 1871 remains on Statute. A fully resourced 'Decision Support Service' as established under the Act has an important role in Ireland complying with Article 12.

#### Article 5 (Accessibility)

The Disability (Miscellaneous Provisions) Bill 2016 sought to amend the law relating to 'reasonable accommodation'. This amendment would have ensured that public services were required to put reasonable accommodations for disabled people in place unless they exceeded "a disproportionate burden". This is the standard of Article 9 of the UNCRPD and already the standard for employers.

The "not exceeding a disproportionate burden" standard was also to be extended to commercial bodies whose activities are regulated for quality of service e.g. banks, insurance companies, telecommunications and transport providers but smaller, private businesses, such as shops and restaurants would be expected to comply with a "nominal cost" standard, which is much lower than UNCRPD Standard.

Without this legislation passing, the "nominal cost" standard will remain across all services and even if it does pass, a two-tier system of services will be in place with a difference between public and private services.

Inclusion Ireland understands that there is a Constitutional issue relating to the right to private property affecting the realisation of this right and agrees with the Irish Human Rights & Equality Commission's contention that the Government should consider an enhanced responsibility for "larger providers of goods and services . . . be based on a turnover threshold<sup>3</sup>" or alternatively that a funding scheme to support smaller business reach the higher accessibility standard should be considered.

#### Article 6 (Women with disabilities)

Ireland recently reformed the law relating to sexual offences and people with intellectual disabilities in order to bring it in line with the UNCRPD. Part 3 of the Criminal Law (Sexual Offences) Act 2017 introduced an offence of sexual contact with a "protected person". Inclusion Ireland believes that this is a discriminatory provision and it involves a person who by reason of a mental or intellectual disability or a mental illness is

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<sup>3</sup> IHREC; Observations on the General Scheme of the Equality / Disability (Miscellaneous Provisions) Bill 02/12/2016

“incapable of understanding the nature, or consequences of the act involved.

This is in stark contrast to the Assisted Decision-Making (Capacity) Act 2015 which took a ‘disability neutral’ approach to assessing capacity.

Protection and the word ‘protect’ is used by the UNCRPD to describe the protection of rights and not the patriarchal concept of ‘protection’ as demonstrated in the Sexual Offences Act. The label of ‘protected person’ simply does not feature in the UNCRPD and the Convention cannot be used to justify the use of patriarchal terminology.

The UNCRPD requires States to “take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms”.

Furthermore the Committee on the Rights of Persons with Disabilities has said: “Sexual rights are fundamentally entrenched in the human rights to, dignity, physical and mental integrity, private life, health and equality, in addition to the right to non-discrimination and with the physical and mental integrity on an equal basis with others.”

Inclusion Ireland asks that post-legislative scrutiny of this Act takes place and a full consultation with persons with disabilities should occur.

### Article 33 (National implementation and monitoring)

Ireland requires a monitoring mechanism post-ratification and without the passing of the Disability (Miscellaneous Provisions) Bill these mechanisms will not be established.

The Bill provided for a focal point in the Department of Justice & Equality for implementing the Convention.

The UNCRPD committee has recommended that States Parties ‘establish strong and efficient focal points within each ministry and State institution responsible for implementing the Convention’. Many states have opted for Social Protection ministries. In Northern Ireland, the Office of the First Minister and Deputy First Minister in Northern Ireland are the focal point.

Inclusion Ireland believes that there should be a single focal point to be based within the Department of An Taoiseach. This would represent a commitment to persons with disabilities and ensure that the UNCRPD is given a cross-departmental focus.

Inclusion Ireland welcomes the IHREC as the monitoring body. As the body responsible for monitoring Ireland's performance with other UN instruments, it is important that the UNCRPD is monitored in a similar fashion. However the proposals relating to "an advisory committee" are concerning. The Bill states that "at least half of the number of persons appointed ...shall have, or have had, a disability". IHREC reported that an approach similar to that of Malta, where 10/12 members had a lived experience and 2/12 were family members was the preferred approach in their view.

Inclusion Ireland believes that any advisory body should comprise wholly of persons with personal, lived experience of disability that this committee should be representative of all forms of disability and should be adequately resourced, facilitated and its members accommodated and supported.

#### Article 14 (Liberty and security of person)

Article 14 requires States Parties to ensure that persons with disabilities enjoy the right to liberty and security of person on an equal basis with others.

Ireland is introducing 'Deprivation of Liberty' safeguards which amount to a process to underpin a person being admitted to a relevant facility where the relevant person will be under continuous supervision and control and will not be free to leave.

At present, there is no law which allows or provides for;

- A procedure for admitting persons without capacity to relevant facilities, or
- Any safeguards to make sure those persons without capacity are not being unlawfully deprived of their liberty.

It is crucial that Ireland

- (a) Provides options for living arrangements that do not amount to a deprivation of liberty.
- (b) Provide community-based supports for people with disabilities to avoid institutionalisation
- (c) Ensure that those who are deprived of their liberty and in institutionalised living arrangements have access to support, advocacy and safeguarding.

The deprivation of liberty consultation that is ongoing is not inclusive of many disabled people despite taking place over a large number of

months. Information was not provided in accessible formats, despite requests and it is essential that any further consultation includes people currently living in institutions, nursing homes or mental health-facilities.

### **Lessons from other countries**

Once Ireland has ratified the UNCRD, the clock is ticking on monitoring and examination by the UN. Ireland's likely performance can only be speculated upon at this point but we can learn significant lessons from its closest neighbor in the UK.

The report published in 2016 by the UN Committee on the Rights of Disabled Persons (CRPD), found that the UK's austerity policies "systematically violated" the rights of disabled people and this has resonance for Ireland.

Cuts to independence payments and independent living funds, the assessment processes for social protection payments and the disproportionately high number of disabled people who are unemployed were all classified as grave and systemic abuses of the human rights of persons with disabilities.

In Ireland, disabled persons are more likely to be out of work<sup>4</sup> and over the period from 2009 to present, have seen cuts to social protection payments, respite care grants, household benefits packages, cuts to education supports and transport. Although many of these cuts are being reversed as the economy up-turns, persons with disabilities are not necessarily seeing the benefits. Income inequality has fallen among most socio-economic groups but it increased among, persons with disabilities. Similarly, poverty among persons with a disability has increased during as well as the rate of consistent poverty.

### **Conclusion**

While it must be acknowledged as a positive step that Ireland has finally ratified the UNCRPD, it is not a cause for celebration that this belated step has been taken.

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<sup>4</sup> Employment and People with Disabilities Watson, Banks, Lyons (ESRI)

The excuse that has been made for over a decade relating to Ireland's status as a dualist state has proved to be hollow and simply put, the political will had not been present in successive governments.

Ratifying without completing the remaining legislative barriers is a risky move and a clear deadline for the completion of all remaining areas of law reform must be published.

Additionally, Inclusion Ireland's key asks are;

- The "advisory committee" of disabled people to support the IHREC in monitoring the UNCRPD must be established, resourced and given training and other supports.
- This "advisory committee" should be representative of all persons with a disability and be comprised of a majority of disabled people.
- A commitment from Government that all information relating to and consultations pertaining to the UNCRPD are produced in accessible and easy-to-read format.
- A timetable for all key legislative reform (i.e. the Roadmap to Ratification) be issued with specific deadlines for all outstanding matters.
- Advice from the Attorney General be sought and published into the conflict between private property rights and reasonable accommodation.
- A commitment to establish the Decision Support Service in 2018 must be made.
- An explanation and if necessary, an apology, made for the 11-year delay in ratification of the UNCRPD.
- Post-legislative scrutiny of the Sexual Offences Act and a full consultation with persons with disabilities should occur.
- Adequate consultation on 'deprivation of liberty' safeguards should take place and continued commitment to non-institutionalised models of living and community inclusion should be made.

For further information contact

**Sarah Lennon**, Communications and Information Manager  
[sarah@inclusionireland.ie](mailto:sarah@inclusionireland.ie) or 01 855 98 91