

Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)

Ireland is committed to proceeding to ratification as quickly as possible, taking into account the need to ensure all necessary legislative and administrative requirements under the Convention are met.

Ireland is a dualist State, Article 29.6 of the Constitution providing that international agreements have the force of law to the extent determined by the Oireachtas. It is essential therefore that the State is in a position to meet the obligations it assumes under the terms of an international agreement from the moment of its entry into force for Ireland. Before the State can ratify the Convention on the Rights of Persons with Disabilities, enactment of new legislation and amendment of existing legislation is required to ensure obligations will be met upon entry into force for Ireland.

This Roadmap sets out the legislative measures needed to meet those requirements, along with declarations and reservations to be entered by Ireland on ratification.

Article 3 - General principles

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 3</p> <p>The principles of the present Convention shall be:</p> <p>a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;</p>		<p>Enactment of Assisted Decision-Making (Capacity) Bill 2013.</p> <p>Amendment of Companies Act 2014 188 (4) (a) and (c) to remove reference to "unsound mind"</p>	<p>The Bill is currently awaiting Report Stage in the Dáil.</p> <p>The Companies Act 2014 will be amended by the Department of Jobs, Enterprise and Innovation in the upcoming Accounting Bill 2015, enactment of which is intended by end-2015.</p>

Article 5 – Equality and non-discrimination

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 5</p> <p>3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.</p>	<p>Equal Status Acts</p>	<p>Legislation required to provide for 'disproportionate cost' standard' in provision of goods and services where possible, having regard to the Supreme Court judgment in Art. 26 Referral (EEB1996) that the cost burden on private employers cannot exceed a nominal cost.ⁱ</p>	<p>The terms of the Supreme Court decision precluded the imposition of a reasonable accommodation requirement where the cost was more than a nominal cost for private employers. The EU Employment Equality Directive subsequently set the standard at the higher UN standard of 'disproportionate cost' in respect of employment. In relation to provision of goods and services, the advice available to the Department is that the higher standard can also apply to public sector bodies providing services and to those public sector entities that are licensed or regulated for quality of customer service. The provision of the higher standard in the case of the remaining private sector providers can be considered in the light of developments in relation to EU anti-discrimination legislation and may need to be subject [in the interim] to a progressive realisation declaration..</p> <p>The Department of Justice and Equality will bring forward legislation in this regard in the Equality/Disability (Miscellaneous Provisions) Bill for enactment in 2016.</p>

Article 12 - Equal recognition before the law

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 12</p> <p>1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.</p>		<p>Enactment of Assisted Decision-Making (Capacity) Bill 2013</p>	<p>Enacted by end-2015</p>
<p>2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.</p>	<p>Criminal Law (Insanity) Act 2006, section 4</p>	<p>Enactment of Assisted Decision-Making (Capacity) Bill 2013</p> <p>Amendment to section 4 of the Criminal Law (Insanity) Act 2006 necessary to address the issue that was the subject of the judgment of the High Court in <i>G. v. District Judge Murphy</i>²</p> <p>Declaration in relation to Ireland's understanding of Article 12, along the lines of those entered by Canada, Australia and Norway on ratification.</p>	<p>As above</p> <p>Amendment to be included in the Equality/Disability Miscellaneous Provisions Bill for enactment in 2016, if not progressed in separate legislation before then.</p>
<p>3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.</p>		<p>Enactment of Assisted Decision-Making (Capacity) Bill 2013</p>	<p>As above in 12.1</p>
<p>4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of</p>		<p>Enactment of Assisted Decision-Making (Capacity) Bill 2013</p>	<p>As above in 12.1</p>

Article 12 - Equal recognition before the law

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>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 and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.</p>			
<p>5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.</p>		<p>Enactment of Assisted Decision-Making (Capacity) Bill 2013</p>	<p>As above in 12.1</p>

Article 13 – Access to Justice

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 13</p> <p>1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.</p>		<p>Amend Schedule 1, Part 1 of Juries Act 1976 to provide for presumption of capacity and change definitions, which will be included in the Assisted Decision-Making (Capacity) Bill 2013</p> <p>Enact Assisted Decision-Making (Capacity) Bill 2013</p>	<p>Enacted by end-2015</p> <p>As above</p>

Article 14 - Liberty and security of the person

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
Article 14 1. States Parties shall ensure that persons with disabilities, on an equal basis with others:			
a) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.	Mental Health Act 2001	<p>Amendment of Mental Health Act 2001</p> <p>Enactment of Assisted Decision-Making Capacity Bill 2013</p> <p>Provisions on involuntary detention: need for a declaration with regard to involuntary detention, along lines of Australia and Norway</p> <p>Clarity on issue of nursing homes and care homes for people with intellectual disabilities. The Department of Health is considering the issue further and will seek further legal advice. The Department of Justice and Equality is open to taking the necessary amendments forward as part of the Equality/Disability Miscellaneous Provisions Bill.</p>	<p>It is expected that an amending Mental Health Bill will be published in 2016.</p> <p>Enacted by end-2015</p> <p>Subject to legal advice, the Departments of Health and Justice and Equality will cooperate to include any required legislative provisions in the Equality/Disability (Miscellaneous Provisions) Bill for enactment in 2016.</p>

Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 15</p> <p>1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.</p>	<p>Mental Health Act 2001, by means of the Mental Health (Amendment)Bill 2008</p>	<p>Action required on administration of ECT. When enacted, the Mental Health (Amendment) Bill 2008 will make immediate changes to the Mental Health Act 2001.</p>	<p>Enactment is expected by end-2015.</p>

Article 23 - Respect for home and the family

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 23</p> <p>1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:</p>			
<p>a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;</p>	<p>Article 5 of the Criminal Law (Sexual Offences) Act 1993³</p>	<p>Progress Sexual Offences Bill</p>	<p>Enactment is expected in early 2016.</p>

Article 27 - Work and employment

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 27</p> <p>1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:</p>			
<p>a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;</p>		<p>Reservation to be put forward as per legal advice</p>	
<p>b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;</p>		<p>See above at (a)</p>	

Article 29 - Participation in political and public life

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 29</p> <p>States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:</p>			
<p>a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:</p>	<p>Schedule 1, Part 1 of Juries Act 1976⁴</p> <p>Section 41(i) of the Electoral Act 1992⁵</p> <p>Section 42 of the Electoral Act 1992⁶</p>	<p>Amend Schedule 1, Part 1 of Juries Act 1976 to provide for presumption of capacity and change definitions; to be included in the Assisted Decision-Making (Capacity) Bill 2013.</p> <p>Amend/repeal Section 41(i) of the Electoral Act 1992.</p> <p>Amend Section 42 of the Electoral Act 1992.</p>	<p>Enactment by end-2015</p> <p>The Department of Justice and Equality will bring forward the necessary amendments, in consultation with the Department of the Environment, Community and Local Government and the Attorney General, in the Equality/Disability (Miscellaneous Provisions) Bill, for enactment in 2016.</p>
<p>b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:</p> <ul style="list-style-type: none"> i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties; ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels. 	<p>Companies Act 2014⁷</p>	<p>Amendment to section 188.4 (a) and (c) of the Companies Act 2014 (reference to "unsound mind")</p>	<p>Amendment of Companies Act to be undertaken by DJEI in upcoming Accounting Bill 2015, enactment of which is intended by end-2015.</p>

Article 33 - National implementation and monitoring

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>Article 33</p> <p>1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.</p>	<p>Legislation will be required for ratification; seek legal advice as to whether focal point needs to be designated by law.</p>	<p>Equality Division in the Department of Justice and Equality to be designated as the focal point.</p>	<p>Already in place at an administrative level.</p>
<p>2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.</p>		<p>The monitoring framework proposed would comprise:</p> <ul style="list-style-type: none"> • The Irish Human Rights and Equality Commission as the Independent Mechanism with the function to protect, promote and monitor implementation of the Convention, and to submit periodic independent reports to the UN. As Ireland's National Human Rights Institution (NHRI), IHREC fully meets the standard of independence in accordance with the Paris Principles⁹. • The National Disability Authority, with the function to prepare independent assessments of progress, including compilation of statistical information, which would inform the periodic independent reports of the Irish Human Rights and Equality Commission <p>Provision will be made in the amending legislation for formal consultation with all relevant stakeholders.</p>	<p>Further consultations in 2016. Legislative provisions to be included as necessary in Equality/Disability Miscellaneous Provisions Bill, for enactment in 2016.</p>

Article 33 - National implementation and monitoring

Provision of UN CRPD	Legislation to be amended	Further Action Required	Estimated time required
<p>3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.</p>		<p>We envisage an active role for civil society and stakeholders in the monitoring process. IHREC is specifically mandated in section 18 of the Irish Human Rights and Equality Commission Act 2014 to establish Advisory Committees and other methods of consultation with relevant agencies and with NGOs and other civil society interests.</p> <p>The Department of Justice and Equality also consults with the Disability Stakeholders Group. The group comprises both disability service users and disability service providers, and was set up to participate in monitoring and oversight of the National Disability Inclusion Strategy.</p> <p>In addition, the NDA can advise on effective ways to consult with people with disabilities and if so requested, could also undertake consultation with people with disabilities to inform the reporting and monitoring process.</p> <p>Taken together, these mechanisms provide a good basis for civil society to fully participate in the monitoring process, and consultation on the precise form of such involvement will continue. The Minister will bring final proposals in that regard to Government when seeking approval for ratification of the General Scheme of the necessary legislation.</p>	<p>Further consultations in 2016 – legislative provisions to be included as necessary in Equality/Disability Miscellaneous Provisions Bill, for enactment in 2016.</p>

Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (OP-CRPD)

The Optional Protocol (OP-CRPD) to the Convention on the Rights of Persons with Disabilities (CRPD) provides for individual complaints to be submitted directly to the CRPD Committee by individuals and groups of individuals, or by a third party on behalf of individuals and groups of individuals, alleging that their rights have been violated under the CRPD. Complaints may only be communicated against a State party that has ratified or acceded to the OP and only upon the exhaustion of all available and effective domestic remedies

As of July 2015, OP-CRPD has 92 signatories and 87 state parties. 20 European Union member states have ratified the Optional Protocol: Austria, Belgium, Croatia, Cyprus, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Ratification of the Optional Protocol by Ireland would allow the Committee to receive, consider and provide its views and recommendations in relation to alleged violations by Ireland of Convention rights as communicated by persons with disabilities or those acting on their behalf. Ireland has already ratified several Optional Protocols of this type, including OP-ICCPR in 1989, OP-CEDAW in 2000, and most recently, the third Optional Protocol to the Convention on the Rights of the Child in September 2014.

We intend to sign and ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities at the same time as the Convention itself is being ratified.

References

ⁱ The Supreme Court decided in an Article 26 referral in 1996 that it is unconstitutional to impose an obligation on employers to provide reasonable accommodation to people with disabilities where the cost exceeds a nominal cost. The UN CRPD requires a higher standard, that of disproportionate cost. Even if it is difficult to quantify in cash terms in an abstract way what the difference would be in real life situations, this Constitutional impediment needs to be solved before we can ratify.

The EU Employment Equality Directive - which, as EU law, takes precedence over the Constitution - solved the problem insofar as employment is concerned. This leaves the area of provision of goods and services.

The Supreme Court decision hinges on the private property protection provisions of the Constitution. Clearly, these do not arise in relation to provision of public services. We also have legal advice that the State can impose a higher obligation on commercial bodies whose activities are regulated for quality of service, such as banks, insurance companies, telecommunications providers, and so on. We are then left with a range of smaller businesses, such as shops and restaurants. In the case of such service providers we need to find a solution.

² In *G v District Judge Murphy*, the High Court ruled that the section 4 of the Criminal Law (Insanity) Act 2006 contained an unconstitutional lacuna in respect of people with mental disorders. The Criminal Procedure Act 1967 provides that the District Court may, subject to certain conditions, try summarily an indictable offence where it ascertains that the accused wishes to plead guilty and it is satisfied that the accused person “understands the nature of the offence and the facts alleged.” The DPP had consented to the defendant being tried summarily before the District Court if he pleaded guilty. However, an issue arose as to the defendant’s fitness to plead. The District Court had ruled that it could not try the defendant summarily as there was a question in relation to whether he understood the nature of the offence or the facts alleged. The District Court was thus precluded from determining the issue of the defendant’s fitness to be tried under section 4(3)(a) of the Criminal Law (Insanity) Act 2006 and had to send the defendant forward to the Circuit Court. If the Circuit Court determined that the defendant was fit to be tried, it was then required to try him. This meant that the defendant, who by virtue of his lack of decision-making capacity was unable to fulfil the conditions to be tried summarily, would be subject to a harsher sentencing regime.

The High Court found that this amounted to a violation of the right to equality under Article 40.1 of the Constitution. It thus stated:

“It seems plain that, by reason of what would appear to be a mere accidental oversight in the course of statutory drafting, the Oireachtas has inadvertently failed to have proper regard to the rights and interests of those who are either mentally ill or whose mental capacity is in doubt. Specifically, it can be said that the Oireachtas has through this inadvertence failed to provide a mechanism whereby persons charged with indictable offences whose fitness to plead is later established can obtain the benefit of a guilty plea before the District Court. This is ... in stark contrast to the position of an accused person whose mental capacity is not in doubt and who is thereby not impeded from availing of this option.”

³ Section 5 of the Criminal Law (Sexual Offences) Act 1993 needs to be replaced. Work on this is underway. On 16 September 2015, the Government approved the Criminal Law (Sexual Offences) Bill for publication. The Bill includes wide ranging provisions to enhance the protection of children and vulnerable persons from sexual abuse and exploitation. Amendments to replace section 5 of the 1993 Act are being prepared and will be brought forward at a later stage.

⁴ The 1st schedule, Part 1 (section 7) of the Juries Act 1976 provides that the following are ineligible to serve on a jury:

- A person who because of insufficient capacity to read, deafness or other permanent infirmity is unfit to serve on a jury.
- A person who suffers or has suffered from mental illness or mental disability and on account of that condition either—
 - (a) is resident in a hospital or other similar institution, or
 - (b) regularly attends for treatment by a medical practitioner.

This provision is incompatible with article 29 of the UN CRPD (participation in public affairs (which is not limited to political participation) and seems out-of-line with the approach in the Assisted Decision-Making (Capacity) Bill.

⁵ Section 41(i) of the Electoral Act 1992 provides that a person of unsound mind is not eligible to stand for election for or be a member of Dáil Éireann. Article 18.2 of the Constitution provides that to be eligible for election to the Seanad, a person must be eligible for election to the Dáil. Similar rules apply to eligibility for election to the European Parliament, but not it would appear in relation to membership of the local authorities.

These provisions are contrary to article 29 of the Convention, which guarantees to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. The Convention's provisions are infringed on the basis that these electoral Act rules take a 'status' approach and exclude automatically a class of citizens from standing for election, rather than a 'functional' approach, which assesses the capacity of the individual to participate or make decisions for him/herself in specific circumstances. The term 'unsound mind' is seen as offensive and archaic and a different and more sensitive set of terminology in being introduced in the Assisted Decision-Making (Capacity) Bill.

⁶ Section 42 of the Electoral Act 1992 provides that a person will cease to be a member of the Dáil where he or she becomes of "unsound mind". As in Section 41(i) of the Electoral Act, this provision takes a status approach to capacity which does not comply with Article 12 UNCRPD. This barrier to ratification could be overcome if section 42 of the Electoral Act 1992 were replaced with a provision to the effect that a person will cease to be a member of the Dáil if he or she, notwithstanding the provision of reasonable accommodation, becomes incapable of carrying out his or her functions for the duration of his or her term.

⁷ The Companies Act 2014, Section 188.4 uses the phrase, 'member of unsound mind;'. While this does not seem to legally contravene the Convention in the context of the Act, it would be desirable to have more appropriate and sympathetic language in line with the terminology progressed in the Assisted Decision-Making (Capacity) Bill.

⁸ The Paris Principles are a set of international standards which frame and guide the work of National Human Rights Institutions (NHRIs). Drafted at an international NHRI workshop in Paris in 1991, they were adopted by the United Nations General Assembly in 1993.