

LAW SOCIETY SUBMISSION



SUBMISSION ON THE DISABILITY (MISCELLANEOUS PROVISIONS) BILL 2016

DEPARTMENT OF JUSTICE AND EQUALITY

SEPTEMBER 2017

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Introduction

- 1.1. The Law Society of Ireland, through its Human Rights Committee, welcomes the opportunity to submit observations to the Department of Justice and Equality (hereinafter the “Department”) on the Disability (Miscellaneous Provisions) Bill 2016 (hereinafter “the Bill”). The Society is pleased that the Bill will address the remaining legislative barriers to Ireland’s ratification of the UN Convention on the Rights of Persons with Disabilities (UN CRPD).
- 1.2. This submission will address issues arising out of the Bill. The Society is available to meet with the Department to expand on and clarify points raised within this submission.
- 1.3. The submission was drafted by members of the Human Rights Committee of the Law Society based on their experience as solicitors in this area of law.

2. Summary of Recommendations

The Society recommends the following observations be included in the ongoing consideration of the Bill:

- 2.1. The Society recommends that the word 'Equality' be reintroduced to the title of the Bill so that the Bill becomes the 'Equality/Disability (Miscellaneous Provisions) Bill'.
- 2.2. The Society recommends that the wording of line 5 of the title is amended to read "An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities drafted at New York on 13 December 2006 and signed by the State on 30 March 2007..."
- 2.3. The Society recommends that section 1(1)(b) at lines 20 and 21 be amended to the following: "A person who does not, in the opinion of the court and after being provided reasonable accommodation to accommodate his or her needs, have the ability to perform the functions required of a juror".
- 2.4. The Society recommends that 'reasonable accommodation' is defined in the Bill as closely as possible to the definition of that term in Article 2 of the UN CRPD.
- 2.5. The Society recommends that the Department of An Taoiseach should be given the role of 'focal point' and the Department of Justice and Equality should be the 'co-ordinating mechanism' referred to in section 6 of the Bill. It also considers that section 6(a)(ii) should be amended to read as follows: "...to promote awareness of the UN CRPD and to keep under review the adequacy and effectiveness of law and practice in the State relating to the rights of persons with disabilities."
- 2.6. The Society recommends that deprivation of liberty must be addressed including issuance of codes and rules and monitoring bodies to ensure compliance with UN CPRD and the European Convention on Human Rights. Provision should also be made for independent reviews of liberty and the question of capacity to consent should also be specifically linked in any new legislation.

3. Title of Bill

- 3.1. When the General Scheme of the Disability (Miscellaneous Provisions) Bill 2016 (hereinafter referred to as “the Bill”) was published in August 2016, the Bill was titled ‘the Equality/Disability (Miscellaneous Provisions) Bill’ however when published as a Bill in December 2016 the word ‘Equality’ was omitted. As the ultimate aim of the Bill is to ensure equality for persons with disabilities that word should be reintroduced to its title.

Recommendation: The Society recommends that the word ‘Equality’ be reintroduced to the title of the Bill so that the Bill becomes the ‘Equality/Disability (Miscellaneous Provisions) Bill’.

4. Preamble

- 4.1. The preamble to the Bill states that it is designed to “give further effect to the Convention on the Rights of Persons with Disabilities”. It should be noted a) that this is a United Nations Convention and as such it should be described as the ‘United Nations Convention on the Rights of Persons with Disabilities’ (hereinafter referred to as the ‘UN CRPD’ and b) that it was signed by the State on 30 March 2007.

Recommendation: The Society recommends that the wording of line 5 is amended to read “An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities drafted at New York on 13 December 2006 and signed by the State on 30 March 2007...”

5. Juries Act 1976

- 5.1. The Society observes that section 1 of the Bill will amend the Juries Act 1976. In this regard, it supports the recommendation of NUI Galway’s Centre for Disability Law and Policy in adopting a human rights-based approach to the heading of ‘other persons’ to language that is disability neutral and in keeping with the UN CPRD.

Recommendation: The Society recommends that section 1(1)(b) at lines 20 and 21 of the Bill which currently reads;

“A person who does not, in the opinion of the court, have sufficient mental or intellectual capacity to serve as a juror.”

Be amended to:

“A person who does not, in the opinion of the court and after being provided reasonable accommodation to accommodate his or her needs, have the ability to perform the functions required of a juror”

6. Reasonable Accommodation

- 6.1 Article 5 of the UN CRPD requires that States take “all appropriate steps to ensure that reasonable accommodation is provided” to promote equality and eliminate discrimination. Therefore, the Society submits that thought should be given to defining ‘reasonable accommodation’ and any such definition should reflect, as closely as possible, the definition of that term in the UN CRPD. It may, however, be argued the UN CRPD definition of ‘reasonable accommodation’ is subject to certain limitations in the Irish context in light of the Supreme Court decision in *In re Article 26 and the Equal Status Bill 1997* and this should obviously be taken into consideration when formulating a definition.

Recommendation: The Society recommends that ‘reasonable accommodation’ is defined in the Bill as closely as possible to the definition of that term in Article 2 of the UN CRPD.

7. Implementation and oversight

- 7.1 Article 33 of the UN CRPD obliges States to designate one or more ‘focal points within government’ to ensure implementation. Government should also have a co-ordination mechanism in place and there must also be an independent monitoring body. Given the central and co-ordinating role that the Taoiseach has pursuant to the Constitution it would be appropriate to have the Department of An Taoiseach as the focal point for Article 33 purposes. The co-ordinating role would be appropriate to the Department of Justice and Equality. This should be specifically provided for in the Bill together with the specifics of its powers, duties and functions.
- 7.2 Section 6 of the Bill vests the Irish Human Rights and Equality Commission (IHREC) effectively as the independent monitoring body. The Bill amends section 10(2) of the Irish Human Rights and Equality Commission Act 2014 by the addition of a paragraph after paragraph (h) as follows “without prejudice to the generality of paragraph (b) or (h), to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of persons with disabilities.” The reference to ‘protection’ is contrary to the language, spirit and aims of the UN CRPD which is about moving away from a medical/paternalistic view of disability and towards a social or rights-based approach. Furthermore, in order to satisfy UN CRPD obligations the IHREC should also be charged with promoting awareness of the UN CRPD.

Recommendation: The Society recommends that the Department of An Taoiseach should be given the role of ‘focal point’ and the Department of Justice and Equality should be the ‘co-ordinating mechanism’. It also considers that section 6(a)(ii) should be amended as follows: “...to promote awareness of the UN CRPD and to keep under

review the adequacy and effectiveness of law and practice in the State relating to the rights of persons with disabilities.”

8. Deprivation of Liberty

8.1 Head 3 of the Heads of the Disability Equality Bill 2016 stated:

“[To provide legislative clarity with regard to who has statutory responsibility for a decision that a patient in a nursing home or similar residential care facility should not leave for health and safety reasons.

Provide for an appeals process.] Text to be provided later by D/Health”

8.2 When the Bill was introduced in the Dáil the provisions regarding deprivation of liberty were absent. In order to comply with UN CRPD and the European Convention on Human Rights deprivation of liberty must be addressed. The legislation will have to address a definition of with defining deprivation of liberty and provide for the issuing of rules, codes etc. The Health Information and Quality Authority (HIQA) should play a central role in this regard along with the Decision Support Service when that body commences. Permissible restrictions on liberty will have to be outlined and clear definitions given of various types of restraint, in particular clarity will be required in relation to chemical (medication) restraint and environmental restraint.

8.3 Furthermore the legislation will, where applicable, need to provide for independent reviews of deprivation of liberty. It should also be clear where a deprivation of liberty can occur. Notwithstanding the provisions in the Assisted Decision Making Capacity Act the question of capacity to consent should also be specifically linked in any new legislation. In this regard and in keeping with a movement away from the medical model pursuant to the UN CRPD the appropriate assessment should not be made exclusively by a medical professional.

Recommendation: The Society recommends that deprivation of liberty must be addressed including issuance of codes and rules and monitoring bodies to ensure compliance with UN CPRD and the European Convention on Human Rights. Provision should also be made for independent reviews of liberty, and the question of capacity to consent should also be specifically linked in any new legislation.

9. Conclusion

- 9.1 On balance, the Society welcomes the introduction of the Disability (Miscellaneous Provisions) Bill 2016 and asks that the above recommendations will be considered in refining the text of the Bill.
- 9.2 The Society is hopeful that the recommendations offer practical insights into the potential challenges if the Bill is left unamended.

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