

**National Disability Authority Presentation to the Joint Committee on  
Disability Matters 20<sup>th</sup> April 2023**

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## **Introduction**

The National Disability Authority (NDA) thanks the Chair and the members of the Joint Committee on Disability Matters for the opportunity to present on the importance of a rights based approach to disability matters, in line with **the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**.

The NDA provides independent and evidence informed advice to Government on policy and practice relevant to the lives of disabled people. We also incorporate a Centre for Excellence in Universal Design, promoting the design of physical and digital environments so they can be accessed, understood and used by everyone, regardless of age, size, ability or disability.

## **Moving to a rights-based model**

The UNCRPD articulates a series of goals to recognise and realise the rights of disabled people in the various domains of life. The Convention does not in itself establish any new rights for disabled people, but rather recognises these individuals as rights-holders on an equal basis with all other members of the public.

Ireland is a dualist State, meaning that national legislation is essential in underpinning implementation of the obligations under the Convention, and we recognise the work that has been progressed by relevant Departments over the last number of years in developing and revising legislation to allow for greater alignment with the provisions of the Convention. The NDA is aware from its work to support implementation of the National Disability Inclusion Strategy, which expired at the end of 2022, that many disability stakeholders believe some

## **National Disability Authority Presentation to the Joint Committee on Disability Matters 20<sup>th</sup> April 2023**

of the barriers to participation they experience could be overcome through robust implementation of existing legislation.

While the Convention has placed a greater focus on a rights based or social model of disability, it is important to note that this has been the direction of travel in the Irish context for almost twenty years – even in advance of ratification. The Disability Act of 2005 was specifically designed to advance participation of disabled people in society, both by improving access to mainstream public services, and supporting the provision of specialist services where required. The NDA advises that a review of the legislation would be timely, given the developments within the Irish landscape since its enactment, but that the core principles remain valid: namely that bodies responsible for providing services to the public should have due regard to how these services are made accessible to all users, regardless of ability or disability.

### **UNCRPD Implementation Strategy**

The Department of Children, Equality, Disability, Integration and Youth (DCEDIY) will be leading the development of a UNCRPD Implementation Strategy over the course of 2023, and this Strategy will set out a series of commitments for **all** government departments to ensure progressive realisation of the goals of the Convention. The NDA advises the importance of all departments working to become more familiar with UNCRPD and the rights-based approach to disability, so that this can underpin the process to agree priority actions under the new strategy.

Such an approach is provided for under Part 3 of the Disability Act 2005, where Sectoral Plans were required as a statutory obligation from several of the larger departments. These plans set out an approach to address key mainstreaming and specialist provision issues for delivery of services to disabled people. The Act also required Departments to cooperate on certain matters, as well as providing for Oireachtas oversight. The NDA advises that while these plans have fallen into abeyance, the development of a UNCRPD Implementation Strategy offers an opportunity to revisit them. While the configuration of some departments has changed since the legislation was enacted, the sectors of activity remain similar, and continue to be areas where people with disabilities can regularly encounter

## **National Disability Authority Presentation to the Joint Committee on Disability Matters 20<sup>th</sup> April 2023**

barriers, including transport, employment, healthcare, social protection, housing and the built environment. This Committee may wish to consider how the relevant sections of the Disability Act could be reviewed and amended to strengthen their purpose, as there is value in departments outlining clear plans and deliverables to meet their obligations under UNCRPD.

It will also be important, as the Strategy is developed, that consideration be given to the interaction of various legislative instruments, and to establishing mechanisms to support cross-governmental working.

### **The Disability Act and EPSEN**

The EPSEN Act 2004 and the Part 2 of the Disability Act, 2005 were part of an agreed legislative package to improve outcomes for people with disabilities, and were drafted to operate in a joined up way. The non-commencement of key Sections of the EPSEN Act and the challenges to operating Part 2 of the Disability Act have meant that that joined up operation of the Acts has not happened, but that even so, resource allocation rules in the education sector had a significant impact on demand for Assessment of Need under Part 2 of the Disability Act<sup>1</sup>. Similarly the challenges in operating the Assessment of Need process under the Disability Act impact on the education system, and we know the Committee has articulated its concerns on these matters.

The review of the EPSEN Act is taking place in a context that is very different from when the legislation was enacted in 1994. The UNCRPD and General Comment No. 4 (Right to Inclusive Education) require states to progressively realise a more inclusive education model. Domestically there has been some significant policy and resource allocation reforms, a significant increase in funding for special education but also a very significant expansion of the numbers of special class places.

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<sup>1</sup> NDA (2011) **Report on the Practice of Assessment of Need under Part 2 of the Disability Act 2005**. <https://nda.ie/publications/national-disability-authority-report-on-the-practice-of-assessment-of-need-under-part-2-of-the-disability-act-2005>

## **National Disability Authority Presentation to the Joint Committee on Disability Matters 20<sup>th</sup> April 2023**

The NDA has advised that what is required from the current review of the EPSEN Act process is less about commencing the un-commenced sections of the Act or an updating of the legislation but about the development of an agreed clear vision of inclusive education for Ireland and for how it can be progressively realised. There is now an opportunity to discuss and agree that vision of inclusive education for Ireland, and people with disabilities, Disabled Persons' Organisations and children with special education needs and disabilities are central to developing that vision.

### **Other gaps within the system**

As already mentioned, the Disability Act provides for both a mainstream approach to provision of accessible services and supports to the public, and more specialist interventions where relevant and appropriate. The NDA advises that there are a number of areas where delivery of such supports would require additional resources and this should be incorporated in the business planning activities of the relevant departments. We take this opportunity to highlight a number of areas where this might apply, to address current gaps within the system, and would be happy to discuss further with you:

- Provision of coordinated supported employment services to support people with disabilities who wish to work into employment, including those with higher support needs
- Provision of personal assistant supports at a level that reflects the vision of independent living set out in the UNCRPD
- Supply of universally designed housing so that housing stock facilitates independent living for disabled people and older people within our communities
- Further development of transport infrastructure that facilitates independent travel, and in turn full participation in the socio-economic life of the State

## **National Disability Authority Presentation to the Joint Committee on Disability Matters 20<sup>th</sup> April 2023**

### **Definitions and attitudes**

UNCRPD applies a rights-based definition of disability, whereby it is the interaction of an impairment with barriers in society that causes a disability. The NDA advises the importance of disability equality training across the public sector to ensure those delivering services and supports are familiar with this model and how distinct it is from a medical model. We recommend that departments and agencies disability-proof their approach to service provision from the outset, to allow for consideration of how their policies and practices will impact on disabled people. This should include meaningful consultation with disabled people and their representative organisations.

A Universal Design approach to the design and delivery of public services is also something that can help to ensure that these services are accessible for everyone from the outset. The NDA has developed a number of guides and toolkits that can support public bodies to achieve this as efficiently as possible, thereby benefiting the total population as well as disabled people.

### **Conclusion: The challenge ahead**

Ratification of UNCRPD has committed the Irish Government to recognising and realising the rights of disabled people in common with all other rights-holders resident in the State. A review of disability legislation would be timely to allow for a holistic examination of where there may be barriers to achieving this. However, the primary way of achieving progress under UNCRPD is for public bodies to focus on how the mainstream services and supports they currently deliver can be configured to meet the needs of everyone, and then to ensure adequate resourcing of those areas where additional supports might be required. This is already provided for in legislation, and the NDA will continue to provide advice and support to public bodies on how best to meet these obligations.

ENDS