

National Disability Authority Submission

**Oireachtas Joint Committee on Housing, Local
Government and Heritage Pre-Legislative Scrutiny
of the Electoral Reform Bill 2020**

Introduction

The National Disability Authority (NDA) is an independent statutory body with a statutory duty to provide evidence informed advice and information to Government and officials in the public sector on disability matters; to assist in the co-ordination of disability policy and to promote awareness and adoption of universal design to benefit the wider population.

We work through our [Centre for Excellence in Universal Design](#) to promote universal design of the built environment, products, services and information and communication technologies so that they can be easily accessed and used by everyone, regardless of age, size, ability or disability.

The vision of the NDA is a society in Ireland in which persons with disabilities **can realise their civil and political rights**; have opportunities to participate in economic, social and cultural life; have choice and control over how they live their lives; and reach their individual potential in a society and environment that embraces, accommodates and values the full range of human ability and diversity.

The NDA acknowledges the progress that has been made to date by the Department of Housing, Local Government and Heritage in improving access to voting for persons with disabilities but advises that there remain issues to be resolved to ensure an accessible voting system for all. The issues specific to voters with disabilities were articulated through the Commission on the Status of People with Disabilities in its 1996 publication: **A Strategy for Equality**¹, with key points listed in Appendix A.

UN Convention of the Rights of Persons with Disabilities

The right to vote for persons with disabilities is set out in Article 29 (Appendix B) of the **UN Convention of the Rights of Persons with Disabilities** (UNCRPD). As the UNCRPD came in to force in Ireland on 19 April 2018 that the NDA advises the importance of ensuring the necessary measures are taken to ensure access to voting and that all relevant officials are aware of their obligations in this regard. Article 29 is classed as civil and political right which means it is for immediate implementation. The Electoral Commission would be well placed to have specific functions in this regard as further outlined below.

¹ <http://nda.ie/Disability-overview/Key-Policy-Documents/Report-of-the-Commission-on-the-Status-of-People-with-Disabilities/A-Strategy-for-Equality/A-Strategy-for-Equality-Report-of-the-Commission-on-the-Status-of-People-with-Disabilities/Political-rights/>

Ireland is due to send its first State Report to the UNCRPD Committee in Geneva and Article 29 will feature alongside the other Articles.

EU approach to voting for persons with disabilities

Article 20 of the **Lisbon Treaty** gives all citizens of the EU:

“the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;”

Articles 39 and 40 of the EU’s **Charter of Fundamental Rights** state the same rights².

The European Union Agency for Fundamental Rights (FRA) published a paper entitled: **Who will (not) get to vote in the 2019 European Parliament elections?**³ It shows that two-thirds of EU Member States restrict the right to vote for persons with disabilities deprived of legal capacity. This undermines their ability to participate in elections on an equal basis with others.

To realise the right to political participation, the FRA’s paper highlights four key components, namely:

- lifting legal and administrative barriers to political participation
- increasing awareness of the right to political participation of people with disabilities
- making voting procedures, facilities and election materials more accessible
- expanding opportunities for participation in political life

Voters with Disabilities

Currently the following arrangements are in place to assist electors with certain disabilities to exercise their voting rights:

- voting at an alternative polling station if a person’s local station is inaccessible;

² http://www.europarl.europa.eu/charter/pdf/text_en.pdf

³ file:///H:/Downloads/fra-2019-right-vote-ep-elections-legal-capacity_en.pdf

- postal voting by electors living at home who cannot go to the polling station due to a physical disability or illness;
- special voting facilities provided in hospitals, nursing homes or similar institutions for residents who cannot go to the polling station due to a physical disability or illness;
- assistance in voting at the polling station by a companion or by the presiding officer for people with a visual impairment, physical disability or literacy difficulty;
- the use of photographs and party political emblems on ballot papers to assist visually impaired people and people with literacy difficulties; and
- the display of a large print copy of the ballot paper in polling stations to further assist visually impaired people and people with literacy difficulties

Candidates with disabilities

There are, currently, no measures to support those persons with disabilities who wish to run as candidates for election. It is important that persons with disabilities are not prevented from standing as candidates because of barriers they may face. It should be possible for a candidate who is deaf or hard of hearing to be able to access the services of an Irish Sign Language interpreter. A person with a physical disability may need help with transport (e.g. taxi fare) if they don't have access to public transport or an adapted private vehicle. A personal assistant may be required to help a candidate with various activities associated with an election. A potential candidate may also need some form of assistive technology. A scheme called the EnABLE Fund for Elected Office⁴ ran in England from 2010-2020. The fund gave support to candidates for the expenses they needed linked to the election process. The Department may wish to examine this scheme when considering how to incorporate supports for candidates with disabilities into the Irish system.

There are various Heads in the Bill that cover election expenses. The Department of Housing, Local Government and Heritage should give consideration as to how expenses to address the potential issues listed above could be accommodated in the expenses regime outlined in the Bill. Candidates with legitimate, vouched expenses related directly to election activities should be able to have these types of expenses covered under the relevant definitions. In

⁴ <https://www.disabilityrightsuk.org/enablefund>

addition, they should be able to process these expenses using the processes set out in the legislation. The NDA advises that, in keeping with the policy of mainstreaming, it would not be appropriate to require a separate “fund” that sets candidates with disabilities apart from all other candidates.

Establishing an Electoral Commission

A key challenge to progressing accessibility issues for voters with disabilities has been the need for a lead agency dedicated to all electoral matters. We welcome the idea of an Electoral Commission as a body that could address this gap.

The NDA notes that while proposals to establish an Electoral Commission have been developed and articulated, mostly recently through the **Electoral Reform Bill 2020**, there has been no specific focus on the requirements of voters with disabilities as part of this process. The Bill as currently published still has gaps with regard to the provision for persons with disabilities.

The NDA takes this opportunity to make a series of recommendations in line with its competencies in relation to how a new Electoral Commission can go about making voting a more accessible experience for persons with disabilities.

The NDA advises that the Electoral Commission:

- Give due consideration to the UNCRPD and the other disability policy documents and legislation mentioned in this paper
- Provide accessible information to inform persons with disabilities on how to register and how to vote, and support independent voter education initiatives
- Make sure that the proposal for multiple polling days takes account of the needs of persons with disabilities who employ Personal Assistants to enable them to vote
- Liaise with Disabled Persons Organisations, as appropriate, in line with the requirements of the UNCRPD
- Consider ways of supporting more persons with disabilities to become candidates at all levels of the electoral system
- In advance of the commencement of the **Assisted Decision-Making (Capacity) Act 2015** – and its forthcoming amending legislation - ensure that all relevant officials are made aware of their roles under the legislation.
- With due regard to the integrity of the voting system, further explore whether technological advances could pave the way for a universally designed

Electronically Assisted Voting system, considering practicality, usability, accessibility and costs

- The **Electoral Reform Bill 2020** needs to extend the period for registering for a postal vote for persons with disabilities. The NDA is aware that the length of time afforded to persons with disabilities to apply for a postal vote is dependent on the legislation in place that governs the different types of elections and referendums. In some cases the time between the advertisements appearing in the media and the deadline for receipt of applications by a local authority, can be as little as 48 hours. It is difficult for anyone to get an application ready and delivered in this timeframe, and persons with disabilities can encounter additional barriers and obstacles throughout this process.
- Consider altering the existing criteria for those who are eligible to apply for a postal vote. There are many voters with sensory and physical disabilities who may benefit from a postal vote because they have difficulty making their way to a polling station
- The **Electoral Reform Bill 2020** needs to fully incorporate the decision of the High Court in the Sinnott Case
- Ensure that the Electoral Register and the website of the Electoral Commission meets all standards for online accessibility in line with the EU Web Accessibility Directive
- Engage with political parties to ensure that all election information produced by parties is accessible for persons with disabilities, particularly those with intellectual or cognitive disabilities. This should include Plain English and Easy to Read versions as well as Irish Sign Language videos. There are examples⁵ of good practice from the 2020 General Election, however, these would need to be mainstreamed.
- The Department should consider instituting a policy that no new polling station can be situated in a premises that is inaccessible and should work with returning officers to ensure that the last few inaccessible polling stations are phased out. The Department's current figures suggest that out of approximately 7,000 polling stations there were 29 inaccessible buildings and 43 inaccessible polling stations (DHLGH, February 2020).

⁵ The Labour Party produced an Easy to Read and Plain English version of their manifesto for the 2020 General Election

<https://www.labour.ie/assets/files/pdf/ge2020-labour-party-manifesto-easy-to-read.pdf>

<https://www.labour.ie/assets/files/pdf/ge2020-labour-party-manifesto-plain-english.pdf>

Policy and legal background

NDA Accessible Voting Trial 2014

- This trial stemmed from the fact that many people with vision impairments are unable to vote independently in elections in Ireland.
- The trial of a number of alternative methods took place following discussions with the Franchise section of the Department of the Environment, Community and Local Government and the National Council for the Blind of Ireland,
- The results of the trial did not produce a clear recommendation for a secure voting method that would be likely to meet the needs of most voters with a vision impairment.
- The NDA recommended that the Department undertake an examination of the feasibility, logistical and security/integrity issues for electronic vote casting, and explore these issues in partnership with the NDA and that a Ballot Paper Template be trialled at a forthcoming referendum where voters have a simple 'yes/no' choice
- The **Electoral Regulations 2016** allow for the use of Ballot paper template in referendums
- Ballot Paper Templates were used in referendums and a presidential election in 2018.
- Voter feedback from the use of templates has informed the deliberations of the Department's Working Group on Accessible Voting which was set up on foot of that the judgement and declarations that emerged from the Sinnott Case.

Recent developments in accessible voting

- 2014: Mr. Robbie Sinnott took a case against the Minister for the Environment, Community and Local Government in 2014 asking the State to introduce measures that would enable him as a blind person to vote in secret
- 2016: The **Electoral Regulations 2016**⁶ allow for Ballot Paper Templates in referendums,
- 2017: .The verdict in the Sinnott Case expanded the matter further. The court couldn't require the Minister to adopt any particular arrangement, such as a tactile voting device, for such voting. However, it could make a declaration to guide the Minister about the relevant provisions of the

⁶ <http://www.irishstatutebook.ie/eli/2016/si/537/made/en/print>

Electoral Act 1992 in conjunction with the duty under the Constitution to assure a secret ballot as far as is reasonably practicable.

- 2018: The Department's current Working Group on Accessible Voting was established in December 2018 to examine and make recommendations on issues that arise in relation to accessible voting.

The Working Group has overseen the development of Ballot Paper Templates for blind and vision impaired voters that have been used in presidential, European, local, general elections and referendums. Standard templates have been produced to cater for a ballot paper with up to 20 candidates. A smaller number of templates are produced in order to cater for ballot papers with up to 30 candidates. The impact of these is assessed as part of the Department's overall review of the elections.

The NDA is a member of this Working Group. The Group has made progress on some of the issues highlighted as a result of the Sinnott Case. The NDA advises that the outputs of this Working Group need to be reflected in the Bill and that more work needs to be done to reflect the concerns around the provision of a secret ballot for blind and vision impaired voters.

Current legislative and policy considerations

Irish Sign Language Act 2017

This Act was fully commenced on 23 December 2020. The Electoral Commission will come under the remit of this Act when it is established. As a public body under the remit of this legislation the Electoral Commission will need to provide access to their services through ISL when requested. They will also need to factor in the timeframes involved in meeting requests for face-to-face or remote interpreting, based on the circumstances of each request. The Department of Children, Equality, Disability, Integration and Youth has legislative responsibility for this Act. The NDA is currently preparing a statutory report of the operation of the Act since 2017.

Assisted Decision-Making (Capacity) Act 2015

This Act has not yet been fully commenced. Amending legislation is currently being drafted and is due to be enacted before the end of 2021, however, we note the potential implications for all relevant public bodies – including the Electoral Commission. The Act will end the Ward of Court system. The Act proposes to change the law to a functional definition, whereby capacity is assessed only in relation to the matter in question and only at the time in question. The Act also proposes three types of decision-making support arrangements to respond to the range of support needs that people may have in relation to decision-making

capacity. The Decision Support Service is a new service for all adults who have difficulties with their decision-making capacity. This may include people with an intellectual disability, mental illness or acquired brain injury, as well as people with age-related conditions who may need supports to make decisions. It expects to be operational in 2022.

The Act presumes that a voter presenting at a polling station has capacity to vote, however, the NDA advises that further exploration of this presumption in the context of exercising the right to vote may be helpful.

While there is no specific Code of Practice for voting, the Code of Practice on Supporting Decision-Making and Assessing Capacity sets out the guiding principles of the legislation, including the presumption of capacity. Officials will need to be aware of situations where an individual could be registering to vote, or voting, with the support of a decision-making supporter. This Code of Practice is currently under review by the Decision Support Service, and will be put out to public consultation in due course.

National Disability Inclusion Strategy

The **National Disability Inclusion Strategy** is the Government's primary vehicle for applying the provisions of the UNCRPD across all Department's and public bodies. Action 29 of the **National Disability Inclusion Strategy 2017-21** (NDIS) pledges that the Department will progress the accessibility of voting and voter information. In the most recent traffic light update report on the NDIS, dated September 2020, this action was reported to be on track but with no detail provided. The NDA advises the importance of completing this action; especially if it can be done without recourse to the **Electoral Reform Bill 2020** and in partnership with the relevant stakeholders. The NDA also notes that the NDIS has been extended to December 2022.

EU Web Accessibility Directive

Under the EU Web Accessibility Directive (WAD) public bodies in Ireland must ensure their websites and mobile apps are accessible to all people, including persons with disabilities. It is already a requirement, under sections 26 & 28(2) of the **Disability Act 2005**, that websites and electronic communications, originating within this jurisdiction, are accessible to persons with disabilities⁷. The WAD, however, sets out specific timeframes and standards for web accessibility that have to be met under the Regulations.

⁷ <http://www.irishstatutebook.ie/eli/2005/act/14/section/28/enacted/en/html>

The Web Accessibility Directive (WAD) was transposed into Irish law via the **European Union (Accessibility of Websites and Mobile Applications of Public Sector Bodies) Regulations 2020** which came into force on 23 September 2020.

Public sector bodies comply with the 2020 Regulations if for all websites and mobile apps they:

- Meet the relevant parts of the harmonised European standard EN 301 549 V2.1.2 (2018-08). This is the same as meeting all the Level AA Success Criteria from the international guidelines WCAG 2.1.
- Publish and maintain an Accessibility Statement about their websites or mobile apps.

The new online Electoral Register and all the websites and apps of the Electoral Commission will need to comply with the 2020 Regulations. We recommend that any procurement of services to develop a website or app in this regard contains a reference to the European standards mentioned above.

The NDA has been designated as the national monitoring body for the WAD by the Department of the Environment, Climate and Communications.

Universal Design Communications

The NDA has produced, in partnership with the Department of Public Expenditure and Reform, a **Customer Communications Toolkit for the Public Service: A Universal Design Approach**. This document offers guidance on best practice in implementing Universal Design in a public body's various means of communicating with its customers. Universal Design principles should be a key element in the design of the Electoral Commission's offering, and the delivery of its functions, as this will address access, and ease of use of voting for all eligible voters, including those with disabilities.

The NDA advises that the Electoral Commission would also be subject to the relevant sections in Part 3 of the **Disability Act 2005**.⁸ Part 3 places an obligation on public bodies to make their services accessible. Under section 26 of the **Disability Act 2005** there is a statutory requirement on public bodies to integrate, where practical and appropriate, their services for persons with

⁸ <http://www.irishstatutebook.ie/2005/en/act/pub/0014/sec0026.html>
<http://www.irishstatutebook.ie/2005/en/act/pub/0014/sec0027.html>
<http://www.irishstatutebook.ie/2005/en/act/pub/0014/sec0028.html>

disabilities with those for other citizens. Under section 28 public bodies must take steps to make their communications accessible to persons with disabilities.

There is a statutory Code of Practice that complements these provisions.⁹ This Code of Practice has been updated and a new version is currently awaiting signature from the Minister for Children, Equality, Disability, Integration and Youth.

Conclusion

Persons with disabilities need to have an equal opportunity to vote along with their fellow citizens. They also need to be given the necessary supports to be candidates.

It is clear that some progress has been made to improve the accessibility of voting for persons with disabilities. If the **Electoral Reform Bill 2020** is to take full advantage of this opportunity to consolidate and reorganise voting legislation and practice it needs to contain clearer provisions that set out a more flexible voting process.

Greater access to postal voting and multiple polling days will provide more opportunities for persons with disabilities to cast their vote. A universal design approach to communicating voter information and education will improve the knowledge of all potential voters to ensure equal and meaningful participation in the franchise process.

The NDA is available to discuss any of these issues with the Committee and to provide any assistance the Committee requires in this matter.

⁹ <http://www.irishstatutebook.ie/2006/en/si/0163.html>

APPENDIX A

Commission on the Status of People with Disabilities: A Strategy for Equality 1996

Political rights

16.1 Many people with disabilities are unable to exercise their right to vote because polling stations are often inaccessible and because polling procedures, like cards and ballot papers, are not disability friendly. People with disabilities do not have a right to a postal vote.

16.2 A working party recommended in 1983 that a list of eligible postal voters (including people with disabilities) should be compiled each year alongside the electoral register. This recommendation was not accepted on the grounds that postal voting was open to abuse. No evidence was presented to the Commission that there is such a risk of abuse from postal voting by people with disabilities.

16.3 The Electoral Act 1992 provides for a very limited form of voting for people with disabilities. Those who are unable to vote in person at their polling station because of physical illness or physical disability can have their names recorded on a "special voters" list. A presiding officer together with a Garda calls to people on the 'special' list with the ballot paper which must be completed there and then. The legislation also provides that a person whose name is not on the special voters list who satisfies the returning officer that he or she is unable by reason of physical illness or physical disability to vote at the appropriate polling station may be allowed to vote at a more accessible polling station.

16.4 In view of the obvious inadequacies of the present arrangements, the Commission's recommends that all polling stations, booths and procedures should be made accessible for people with disabilities.

16.5 The Department of the Environment should provide a special budgetary allocation in order to ensure that this recommendation will be brought into effect as a matter of priority. A senior officer in the Department should review all voting procedures in consultation with people with disabilities and make sure that all necessary changes are introduced. This would include the printing of photographs of the candidates on ballot papers in order to assist people in voting; the design of polling booths; and the production of voting papers appropriate to the needs of people with disabilities (e.g. In braille).

16.6 People with disabilities who are unable to attend at a polling station should be entitled to be registered on a postal voting register and should be entitled to a postal vote.

16.7 People with disabilities are under represented amongst candidates for election and elected politicians at both local and national levels. Political parties have not taken sufficient positive action to encourage people with disabilities to stand for election and the Commission recommends that all parties should establish affirmative action programmes to encourage people with disabilities to participate fully in local, national and European politics.

APPENDIX B

Article 29

Participation in political and public life

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:

(a) To 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:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To 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:

(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.