

General Scheme of the Equality/Disability (Miscellaneous Provisions) Bill

**Heads in relation to ratification of the UN
Convention on the Rights of Persons with
Disabilities**

Version: 17 August 2016 (Website)

Head 1

Reasonable accommodation

Provide for an amendment to section 4 of the Equal Status Act 2000 as follows:

- (a) in the case of services provided by:
- i. public bodies, within the meaning of section 2 of the Irish Human Rights and Equality Commission Act 2014;
 - ii. regulated financial service providers as defined in section 2(1) of the Central Bank Act 1942, as amended by section 14(1).16 of the Central Bank Reform Act 2010;
 - iii. service providers regulated under section 10(1) of the Communications Regulation Act 2002;
 - iv. service providers licensed under section 6(1) of the Public Transport Regulation Act 2009; or
 - v. providers of public passenger transport services, as defined in section 2 of the Dublin Transport Authority Act 2008 and as provided in sections 48 and 52 of the Dublin Transport Authority Act 2008 as amended by section 29 (1) (h) and (i) of the Public Transport Regulation Act 2009;

a refusal or failure to provide the special treatment or facilities to which subsection (1) refers shall not be deemed reasonable unless such provision would impose a disproportionate burden on the service provider (see the Employment Equality Acts, section 16.3 (b) and (c)).

- (b) The existing *nominal cost* limit on reasonable accommodation in subsection (2) continues to apply to all other providers of goods and services.

Head 2 National mechanisms

Provide for designation of ‘mechanisms’ to form a national monitoring and implementation framework as required under Article 33 of the United Nations Convention on the Rights of Persons with Disabilities as follows:

Designated focal point and coordination mechanism:

The Department of Justice and Equality shall function as the designated focal point within government for matters relating to the implementation of the Convention.

The focal point shall coordinate implementation of the Convention across Government Departments, with assistance and advice from the National Disability Authority.

Promotion, protection and monitoring framework:

Amend the Irish Human Rights and Equality Commission Act 2014 (section 10(2)) to provide that it is a function of the Irish Human Rights and Equality Commission to act as the independent mechanism to promote, protect and monitor implementation of the Convention.

Amend the IHREC Act also at section 18, to provide that, without prejudice to the generality of this section, the Commission shall appoint an advisory committee, the members of which shall all have lived experience of disability, to support it in the above role.

Provide for the National Disability Authority to assist and cooperate with the Commission by provision of data analysis and policy advice (amendment needed to National Disability Authority Act 1999, section 8 (Functions of Authority).

Head 3

Deprivation of liberty

[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

Head 4

Amendment of Electoral Acts

Provide for the replacement of the prohibition in sections 41(i) and (42) of the Electoral Act 1992 on persons “of unsound mind” being elected to, or continuing to serve in the Dáil.

Note: D/Environment have sought AG’s advice on the precise approach to be adopted and this Head will be finalised in the light of that advice.

Head 5

Amendment of Juries Act 1976

Amend 1st schedule, Part 1 of the Juries Act 1976 (“Persons ineligible”) by amending along the following lines:

[Other persons

~~Persons who have—~~

~~(a) an incapacity to read, or~~

~~(b) an enduring impairment,~~

~~such that it is not practicable for them to perform the duties of a juror.”~~

~~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.]~~

Replace with:

A person who because of insufficient capacity to read is unable to discharge the duties of a member of a jury, or because of a physical disability is unable to discharge the duties of a member of a jury (which inability cannot be resolved by provision of reasonable accommodation within the meaning of section 4 (as proposed to be amended by Head 1(a)) of the Equal Status Acts.

A person who lacks the capacity to understand and discharge the duties of a member of a jury. The latter point might be linked to the existence of a formal arrangement under the Assisted Decision-Making (Capacity) Act 2015 as follows:

A person who

(a) has entered into a decision-making assistance agreement as a relevant person under the Assisted Decision-Making (Capacity) Act 2015,

(b) has entered into a co-decision-making agreement as a relevant person under the Assisted Decision-Making (Capacity) Act 2015,

(c) has an enduring power of attorney registered in respect of himself or herself under the Assisted Decision-Making (Capacity) Act 2015,

(d) has an enduring power registered in respect of himself or herself under the Powers of Attorney Act 1996 , or

(e) is the subject of a declaration under section 37(1) of the Assisted Decision-Making (Capacity) Act 2015.

Head 6

Amendment of section 4 of Criminal Law (Insanity) Act 2006

Provide that:

Section 4 of the Criminal Law (Insanity) Act 2006 is amended—

(a) in subsection (3), by inserting the following paragraph after paragraph (c):

“(d) (i) For the purposes of paragraph (a), an indictable offence which is being or is to be tried summarily includes an offence that in the opinion of the Court would be fit to be dealt with or tried summarily in accordance with any enactment providing for the summary dealing with or trial of an indictable offence but for the question having arisen as to whether or not the accused person is fit to be tried, other than an offence in respect of which the Court has been notified that the Director of Public Prosecutions does not consent to the accused person being dealt with or tried summarily if he or she is determined to be fit to be tried.

(ii) In forming an opinion under subparagraph (i), the Court shall disregard any requirement in an enactment referred to in that subparagraph that the Court be satisfied that the person understands the nature of the offence and the facts alleged.”,
and

(b) in subsection (4)(c), by deleting “but, in any case where section 13 of that Act applies, the person shall be returned for trial”.

Head 7 – miscellaneous statute law amendments

Provide for the replacement across the statute book of references to ‘lunatics’ or ‘persons of unsound mind’ being ineligible for membership, or ceasing to be eligible for membership, of certain bodies, or to hold to continue to hold certain offices, with a reference to

A person who lacks the capacity to understand and discharge the duties concerned, linked to the existence of a formal arrangement under the Assisted Decision-Making (Capacity) Act 2015 as follows:

A person who

- (a) has entered into a decision-making assistance agreement as a relevant person under the Assisted Decision-Making (Capacity) Act 2015,
- (b) has entered into a co-decision-making agreement as a relevant person under the Assisted Decision-Making (Capacity) Act 2015,
- (c) has an enduring power of attorney registered in respect of himself or herself under the Assisted Decision-Making (Capacity) Act 2015,
- (d) has an enduring power registered in respect of himself or herself under the Powers of Attorney Act 1996 , or
- (d) is the subject of a declaration under section 37(1) of the Assisted Decision-Making (Capacity) Act 2015.

Other Heads

Head 8

Garda civilian staff

Amendment of subsection 46 (3) of the Disability Act 2005.

Provide for replacement of the reference to **the Garda Síochána** with a reference to **members of the Garda Síochána** in this subsection, on the following lines:

(3) This Part does not apply to the Defence Forces, ~~the Garda Síochána~~ members of the Garda Síochána (as defined in section 2 of the Garda Síochána Act 2005), or prison officers of a prison.

Head 9

Civil servants of the State

Amend the National Disability Authority Act 2005 to provide that its staff be civil servants of the State by inserting new text in section 27 as follows:

A member of staff of the Authority shall be a civil servant in the Civil Service of the State.

The Authority shall be the appropriate authority (within the meaning of the Civil Service Commissioners Act 1956 and the Civil Service Regulation Acts 1956 to 2005) in relation to its officers.

Head 10

Amendment of Equal Status Acts 2000-2015

Add a definition to the existing ground of 'gender' which incorporates transgender and intersex as categories.

Amend section 2 of the Equal Status Acts 2000-2015 to provide for the additions of gender, gender identity, intersex person, transgender man and transgender woman along the following lines:

- 'gender' means being a man, a woman, a transgender man, a transgender woman, or an intersex person;
- 'gender identity' means a person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms;
- 'intersex person' means a person born with gender features which are indeterminate or ambiguous as to gender, or who was born with characteristics of more than one gender;
- 'transgender man' means a person having a male gender identity who was assigned a female sex at birth;
- 'transgender woman' means a person having a female gender identity who was assigned a male sex at birth.

Amend the discriminatory ground of gender in section 3.

Head 11

Amendment of Employment Equality Acts 1998 – 2015

Provide for the broadening of the definition of the existing ground of 'gender' to incorporate incorporates transgender and intersex as categories.

Amend section 2 to add definitions of gender, gender identity, intersex person, transgender man and transgender woman.

Amend the discriminatory ground of gender in section 6.

The appropriate comparators for the purposes of Part III are updated at section 18 to refer to persons of different genders. Accordingly the range of comparators are:

- for a woman - a man, a transgender man, a transgender woman and an intersex person,
- for a man – a woman, a transgender man, a transgender woman and an intersex person,
- for a transgender man – a man, a woman, a transgender woman and an intersex person,
- for a transgender woman - a man, a woman, a transgender man and an intersex person, and
- for an intersex person – a man, a woman, a transgender man and a transgender woman.

For the purposes of the following sections, a reference to a man includes a reference to a transgender man or an intersex person, and a reference to a woman includes a reference to a transgender woman or an intersex person:

- section 24(1), concerning positive action to ensure equality in practice between men and women, and
- section 27, concerning the assignment of a man or a woman to a particular post in An Garda Síochána or the prison service, and recruitment to these services.

No changes are proposed to the following provisions which make specific reference to gender, or to different treatment of men and women – sections 6(2A), 9(1) and (4), 10(2), 18(2), 19 (4) and (5), 21, 22, 25, 26(1), 34, 36(6) and 76(6).

Head 12

Provide for an amendment to section 72(2) of the **Employment Equality Act (as amended by the Equality Act 2004)** to encompass potential employees (as well as employees, as at present), and potential employers, vocational training bodies, professional bodies and trade unions (as well as employers, as at present).

Head 13

Provide along the following lines:

Amendment of Taxes Consolidation Act 1997

The Taxes Consolidation Act 1997 is amended-

(a) in section 3(1)-

(i) in the definition of “incapacitated person”, by deleting “person of unsound mind” and substituting “person who lacks capacity within the meaning of the Assisted Decision-Making (Capacity) Act 2015”, and

(ii) by inserting the following definition:

“ ‘decision-making representative’ has the meaning assigned to it by section 2 of the Assisted Decision-Making (Capacity) Act 2015.”.

(b) in section 459(4)(c) by inserting after “trustee,” “decision-making representative,”,

(c) in section 1017(1)(c) by inserting after “guardian” “, decision-making representative, attorney”,

(d) in section 1022(1)(a) by inserting after “guardian” “, decision-making representative, attorney”,

(e) in section 1034 by inserting after “guardian,” “decision-making representative, attorney”, and

(f) in section 1045 by inserting after “guardian” “, decision-making representative, attorney”.”.

Head 14

Amendment of the Irish Human Rights and Equality Commission Act 2014

Amend section 10(2) of the Irish Human Rights and Equality Commission Act 2014 by substituting the following for paragraph (e):

“(e) to apply to the High Court, or the Court of Appeal, or the Supreme Court for liberty to appear before the High Court, or the Court of Appeal, or the Supreme Court, as the case may be, as amicus curiae in proceedings before that court that involve or are concerned with the human rights or equality rights of any person and to appear as such an amicus curiae on foot of such liberty being granted (which liberty each of the said courts is hereby empowered to grant in its absolute discretion);”