

Regulatory Impact Assessment of Equality/Disability (Miscellaneous Provisions) Bill

Purpose of Regulatory Impact Assessment

This RIA examines the impact of the measures contained in the Equality/Disability (Miscellaneous Provisions) Bill. This Bill is being introduced to address a number of legislative barriers to the ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

The Government published of a roadmap to ratification of the CRPD and the preparation of a General Scheme of an Equality/Disability (Miscellaneous Provisions) Bill to address a range of legislative barriers to ratification of the convention.

Policy Context

Ireland signed the CRPD in 2007 and since then, successive Governments have emphasised Ireland's strong commitment to proceed 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 CRPD, enactment of new legislation and amendment of existing legislation is required to ensure obligations will be met upon entry into force for Ireland.

Ireland is one of only three EU member states yet to ratify the Convention, with the other two, Finland and the Netherlands, due to ratify shortly. While Ireland's not having ratified the CRPD is a recurring point of criticism by the UN as well as by domestic civil society and NGO organisations, it should be noted that in terms of quality of service and the actual position of people with disabilities in society, Ireland is in many respects in advance of other EU states.

The opportunity is also being taken to progress a number of other amendments to equality and disability legislation. While some of these are of substantial importance, others are largely technical.

Policy Options

Government has approved the drafting of the General Scheme of an Equality/Disability (Miscellaneous Provisions) Bill as it is a necessary step to ensure the ratification of the CRPD. The barriers to ratification are in primary

legislation and the necessary amendments must be made by primary legislation. Therefore, there is no 'do nothing' or alternative policy option.

Impacts

Gender Equality

The Bill contains amendments to both the Equal Status and the Employment Equality Acts on the issue of gender.

Following the enactment of the Gender Recognition Act 2015, it is desirable to make explicit the prohibition of discrimination against transgender persons under equality legislation to reflect the significance of the establishment of a system of legal recognition of the acquired gender of transgender persons.

The discriminatory ground of gender, as between two persons, is currently defined as one being a man and the other a woman. To provide explicit protection from discrimination against transgender and intersex persons, the definition of gender would be extended to include transgender and intersex status as different categories of gender, defined on 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.

The new approach to the discriminatory ground of gender, as between two persons, would be that they are of *different* genders. Extending the definition of 'gender' in equality legislation would provide transgender and intersex people with explicit protection from discrimination.

Jobs, Competiveness and Industry Costs

The impact, if any, on Jobs, Competiveness and Industry Costs as a result of the higher standard of *reasonable accommodation* required under the Convention in the provision of goods and services would be minor.

People with disabilities

The Bill will have a positive and significant impact on people with disabilities as it ensures Ireland has reached the required standards as set by the CRPD. It includes:

The introduction of a higher standard of *reasonable accommodation* in relation to the provision of goods and services.

Nominating institutional mechanisms for monitoring the implementation of the CRPD.

Addressing the absence of any legislation in relation to the deprivation of liberty issues in nursing homes, and other care and residential accommodation.

Amending the Electoral Acts to replace the terminology around election to Dáil Éireann and continuing to serve to ensure it is in line with the Assisted Decision-Making (Capacity) Bill 2015. This will reflect the presumption of capacity and guarantee that persons with disabilities enjoy the same political rights as others.

Amending the Juries Act 1976 to allow a person with a disability to serve as a juror if they demonstrate the capacity to carry out the task. It will remove their exclusion from serving based on their status as a person with a disability.

Amending section 4 of the Criminal Law (Insanity) Act 2006 to provide that in the circumstances that existed in *G. v District Judge Murphy*, the District Court will have jurisdiction to determine whether the accused person is fit to be tried.

Replacing a number 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 or ceases to have as the case may be the capacity within the meaning of the Assisted Decision-Making (Capacity) Act 2015 to understand and discharge the duties associated with such membership.

Applying the '3%' public service employment quota to Garda civilian staff who were inadvertently removed from the scope of the Disability Act by the enactment of the Garda Síochána Act 2005. Members of An Garda Síochána are excluded from the 3% public sector employment quota for people with disabilities but it should continue to apply to the civilian members of staff.

Other Impacts

There are no impacts on North-South, or East- West relations, rural communities, quality regulation or poverty.

Linkages with other areas of Government Policy

The Bill links in directly and supports the National Disability Strategy Implementation Plan 2013-2015 and the new National Disability Inclusion Strategy 2016-2020.

Exchequer Costs

No direct Exchequer costs arise.

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