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UNIVERSITY OF GALWAY

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An tIonad Dlí & Beartais Míchumais  
Centre for Disability Law & Policy



Disability  
Legal  
Information  
Clinic

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## **A review of law and policy in light of Ireland's obligations under 4 Articles of the UNCRPD**

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**Report for:** DPO Network

**Prepared by:** Ashleigh Potterill-Veltman, Carolina Savonitto, Pippa Black, Róisín Moran, Dr Clíona de Bhailís and Professor Eilíonóir Flynn.

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**February 2024**

## Table of Contents

<b>Introduction .....</b>	<b>3</b>
<i>About the DPO Network.....</i>	<i>3</i>
<i>Background and Context.....</i>	<i>4</i>
<i>About the Centre for Disability Law and Policy.....</i>	<i>4</i>
<b>Article 19 – Living independently and being included in the community .....</b>	<b>5</b>
<i>Overview of existing law and policy.....</i>	<i>5</i>
<i>Lived experience of disabled people in Ireland .....</i>	<i>6</i>
<i>Key barriers and recommendations for reform .....</i>	<i>9</i>
<b>Article 24 – Education.....</b>	<b>11</b>
<i>Overview of existing law and policy.....</i>	<i>11</i>
<i>Lived experience of disabled people in Ireland .....</i>	<i>12</i>
<i>Key barriers and recommendations for reform .....</i>	<i>14</i>
<b>Article 27 – Work and Employment .....</b>	<b>16</b>
<i>Overview of existing law and policy.....</i>	<i>16</i>
<i>Lived experience of disabled people in Ireland .....</i>	<i>17</i>
<i>Key barriers and recommendations for reform .....</i>	<i>20</i>
<b>Article 28 - Adequate standard of living and social protection .....</b>	<b>22</b>
<i>Overview of existing law and policy.....</i>	<i>22</i>
<i>Lived experience of disabled people in Ireland .....</i>	<i>23</i>
<i>Key barriers and recommendations for reform .....</i>	<i>25</i>
<b>Conclusion .....</b>	<b>26</b>

## Introduction

This report has been prepared for the DPO Network. It reviews Ireland's law and policy in light of the obligations under the UN Convention on the Rights of Persons with Disabilities. The review focuses on 4 key articles of the Convention –

- Article 19 – Living independently and being included in the community,
- Article 24 – Education,
- Article 27 – Work and Employment and
- Article 28 – Adequate standard of living and social protection.

The report has a section for each article. Each section describes the law and policy in Ireland in this area, what we know about the lived experience of disabled people and the key changes needed to meet the obligations under the Convention.

The report was written by students of the LL.M in International and Comparative Disability Law and Policy at the Centre for Disability Law and Policy. Their work on this report was part of a module entitled 'International Disability Human Rights Clinic' and the Disability Legal Information Clinic at the Centre for Disability Law and Policy. The report does not constitute legal advice.

### About the DPO Network

The **DPO Network** is an alliance of five national Irish disabled person's organisations.<sup>1</sup> Collectively, the DPO Network is committed to the realisation of the UN Convention on the Rights of Persons with Disabilities.<sup>2</sup> The five member organisations in the DPO Network are:

- Disabled Women Ireland
- Irish Deaf Society
- Independent Living Movement Ireland (ILMI)
- The National Platform of Self Advocates
- AsIAM

A disabled person's organisation (DPO) is also sometimes known as Organisations of Persons with Disabilities (OPDs).<sup>3</sup> They are an organisation that is led, directed,

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<sup>1</sup> DPO Network, DPO Network Position Paper No. 1: The role of Disabled Persons' Organisations (DPOs) in Ireland (October 2023).

<sup>2</sup> *ibid.*

<sup>3</sup> Committee on the Rights of Persons with Disabilities, General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention (CRPD/C/GC/7).

and governed by disabled people and which aims to promote or defend the human rights of disabled people.<sup>4</sup>

## Background and Context

Ireland signed the **UN Convention on the Rights of Persons with Disabilities** in 2007 and ratified the Convention in 2018.<sup>5</sup> Ireland has not yet signed or ratified the Optional Protocol to the Convention. The Optional Protocol allows disabled people to make complaints to the UN Committee on the Rights of the Persons with Disabilities.<sup>6</sup> The Convention is monitored by the **Committee on the Rights of the Persons with Disabilities**. Ireland submitted the first State report to the Committee in 2021.<sup>7</sup> Alongside this report, Ireland has given the Committee background information about our population, and our political, legal, economic, and social systems. The Committee also welcomes submissions from disabled person's organisations on how countries are implementing the Convention. Ireland has yet to be examined by the Committee.

## About the Centre for Disability Law and Policy

The **Centre for Disability Law and Policy (CDLP)** at the University of Galway was formally established in 2008. The CDLP's work is dedicated to producing research that informs national and international disability law reform, guided by the principles of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The **LL.M in International and Comparative Disability Law and Policy** is unique in the world as an innovative and internationally focused LLM dealing with the process of law reform in the field of disability. More information about the Centre's work and the LL.M can be found at <http://www.universityofgalway.ie/cdlp/index.html>

The **Disability Legal Information Clinic** was launched in 2011 as a partnership between the CDLP and the student run Free Legal Advice Clinic (FLAC) Society. The clinic's main goal is to provide an information service on legal issues related to disability. The clinic also aims to provide a research resource for practitioners and organisations on aspects of disability law. Since 2018 students on the LL.M in International and Comparative Disability Law and Policy can take a module to work on a research report and give information to clients as part of the clinic.

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<sup>4</sup> *ibid*, para 11.

<sup>5</sup> Irish Human Rights and Equality Commission, *CRPD Explained: A brief guide to the United Nations Convention on the Rights of Persons with Disabilities* (2022).

<sup>6</sup> *ibid*.

<sup>7</sup> Department of Children, Equality, Disability, Integration and Youth, Ireland's first report to the United Nations Committee on the Rights of Persons with Disabilities (November 2021).

<<https://www.gov.ie/en/publication/75e45-irelands-first-report-to-the-united-nations-committee-on-the-rights-of-persons-with-disabilities/#>> accessed 27 February 2024.

## Article 19 – Living independently and being included in the community

This section is about disabled people’s right to choose where, how and who they live with and their right to be part of the community. It first looks at the law and policies in Ireland. The section then describes disabled people’s experiences of living independently and being included in the community and makes recommendations for how the law and policy needs to change to follow the Convention.

### Overview of existing law and policy

In Ireland it is mainly policies, not laws, that describe what the government will do to make sure disabled people can live independently and in the community. Living in the community was one of the main themes of the **National Disability Inclusion Strategy**.<sup>8</sup> The strategy ended in 2022 and a new strategy is currently being developed.

**Time to Move on From Congregated Settings - A Strategy for Community Inclusion**,<sup>9</sup> aimed to make sure that disabled people did not live in congregated settings (or institutions). In that policy, congregated settings were defined as settings where ten or more disabled people live together.<sup>10</sup> This definition does not align with the Convention.<sup>11</sup> A final review of the Strategy showed that the few goals that were successful did not really help disabled people and it did not meet a lot of its goals.<sup>12</sup> A new strategy has not been published.<sup>13</sup>

The **National Housing Strategy for Disabled People 2022 - 2027** aims to build new, different types of accessible and affordable homes and make supports more accessible.<sup>14</sup> Through the **Transforming Lives** programme, services should be community-based and individualised supports should be controlled by disabled

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<sup>8</sup> Department of Children, Equality, Disability, Integration and Youth, ‘National Disability Inclusion Strategy (2017-2021)’ (24 February 2020 (last updated March 2022)).

<sup>9</sup> Health Service Executive, ‘Time to Move On from Congregated Settings – a Strategy for Community Inclusion’ (June 2011)

<sup>10</sup> Ibid, 10

<sup>11</sup> United Nations Committee on the Rights of Persons with Disabilities, ‘General Comment No. 5 (2017) on Living Independently and being Included in the Community’ (2017) UN Doc CRPD/C/GC/5 4-5

<sup>12</sup> National Disability Authority, ‘Final Review of Progress on Indicators of the National Disability Inclusion Strategy’ (June 2023) 12

<sup>13</sup> National Disability Authority, ‘UNCRPD Implementation Plan’ (National Disability Authority) <<https://nda.ie/monitoring/national-disability-strategies/uncrpd-implementation-plan>> accessed 16 November 2023

<sup>14</sup> Department of Housing, Local Government and Heritage; Department of Health and Department of Children, Equality, Disability, Integration and Youth, ‘National Housing Strategy for Disabled People 2022-2027’ (14 January 2022 (last updated 21 September 2023))

people.<sup>15</sup> A Task Force on Personalised Budgets was set up,<sup>16</sup> and the Personalised Budget Pilot is currently in its demonstration phase and will be evaluated middle 2024.<sup>17</sup> The project gives disabled people funding directly so that they can choose services they need and want.<sup>18</sup> Similarly, the National Person-Centred Planning Framework focuses on personalised services and led to the Demonstration Project.<sup>19</sup>

There are a few laws that make public services accessible. The **Irish Sign Language Act 2017** places duties on public bodies to ensure that Irish Sign Language interpreters are available when people use their services.<sup>20</sup> The **Disability Act 2005** says that public services and buildings should be accessible and established the Centre for Excellence in Universal Design.<sup>21</sup> Like the **Equal Status Act**, it says some changes do not need to be made if it is too expensive or would create a delay in services for other people.<sup>22</sup> Part M of the Building Regulations require commercial buildings and apartment blocks to get a Disability Access Certificate,<sup>23</sup> but building regulations do not apply if the adjustments are expensive and buildings only need to be wheelchair visit-able, not liveable.<sup>24</sup>

## Lived experience of disabled people in Ireland

The housing shortage in general and low number of accessible social housing and supports have prevented disabled people from living independently.<sup>25</sup> 27% of people who are homeless have a disability.<sup>26</sup> At the end of 2023, there are at least 1,532

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<sup>15</sup> Health Service Executive, 'Transforming Lives' (2016)

<sup>16</sup> Department of Health, 'Task Force on Personalised Budget' (16 July 2018 (last updated 26 October 2020))

<sup>17</sup> Department of Health, 'Minister Rabbitte announces extension to Personalised Budget Pilot until 2023' (*gov.ie*, 5 July 2022) <<https://www.gov.ie/en/press-release/4e443-minister-rabbitte-announces-extension-to-personalised-budget-pilot-until-2023/>> accessed 16 November 2023

<sup>18</sup> Health Service Executive, 'Personalised Budgets for People with a Disability' <<https://www.hse.ie/eng/services/list/4/disability/personalised-budgets-for-people-with-a-disability.html>> accessed 15 November 2023

<sup>19</sup> Health Service Executive, 'Person-Centred Planning Framework' (2018) and Health Service Executive, 'A Report on the Demonstration Project 2019' (February 2020) 6-7

<sup>20</sup> Irish Sign Language Act 2017

<sup>21</sup> Disability Act 2005

<sup>22</sup> Ombudsman, 'The Disability Act' (*The Ombudsman*) <<https://www.ombudsman.ie/disability-act/the-disability-act/>> accessed 16 November 2023

<sup>23</sup> Part M of Building Regulations

<sup>24</sup> Ombudsman, 'The Disability Act' (*The Ombudsman*) <<https://www.ombudsman.ie/disability-act/the-disability-act/>> accessed 16 November 2023 and Ellen O'Regan, 'All the small things blocking access for people with disabilities' (*Irish Examiner*, 27 March 2022) <<https://www.irishexaminer.com/news/spotlight/arid-40837394.html>> accessed 27 November 2023

<sup>25</sup> Joint Committee on Disability Matters, 'Ensuring Independent Living and the United Nations Convention on the Rights of Persons with Disabilities' (March 2022) 64

<sup>26</sup> Irish Human Rights and Equality Commission and ESRI, 'Discrimination and Inequality in Housing in Ireland' (June 2018) ix and Joint Committee on Disability Matters, 'Ensuring Independent Living and the United Nations Convention on the Rights of Persons with Disabilities' (March 2022) 64

disabled people still living in institutions.<sup>27</sup> The goal to move disabled people out of institutions is not on track and it may take more than 10-20 years to move all disabled people out of institutions.<sup>28</sup> As of 30 June 2020 there were 1,320 disabled people under the age of 65 living in nursing homes.<sup>29</sup> There is no specific policy or detailed statistics to address this issue.<sup>30</sup>

Disabled people feel that current policies fail to provide enough accessible, affordable homes.<sup>31</sup> Some disabled people have waited for more than 10 years for social housing.<sup>32</sup> The waiting time for disabled people has increased but it has decreased for the general social housing waiting list.<sup>33</sup> A very limited amount of disabled people live independently; most are in community group homes.<sup>34</sup> Disabled people struggle to rent private homes because landlords have no obligation to make homes accessible.<sup>35</sup> Many disabled people have reported that their living situation does not suit their needs and living independently is too expensive.<sup>36</sup> Disabled people say they want more housing options and want it to be closer to services.<sup>37</sup> The process to get a home needs to be more accessible and understandable.<sup>38</sup> Even if more social housing is available, disabled people cannot live independently if they do not have the supports to help them. Disabled people need supports before, during and after the housing process.<sup>39</sup>

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<sup>27</sup> Joint Committee on Disability Matters, Opening Statement by Mr Bernard O'Regan National Lead Disability Operations, (17 January 2024) <[https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_disability\\_matters/submissions/2024/2024-01-17\\_opening-statement-bernard-o-regan-head-of-operations-disability-services-et-al-health-service-executive-hse\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_disability_matters/submissions/2024/2024-01-17_opening-statement-bernard-o-regan-head-of-operations-disability-services-et-al-health-service-executive-hse_en.pdf)> accessed 27 February 2024.

<sup>28</sup> National Disability Authority, 'Final Review of Progress on Indicators of the National Disability Inclusion Strategy' (June 2023) 9 and Joint Committee on Disability Matters, 'Ensuring Independent Living and the United Nations Convention on the Rights of Persons with Disabilities' (March 2022) 51

<sup>29</sup> Ombudsman, 'Wasted Lives-Executive Summary' (2021) 2

<sup>30</sup> *Ibid*, 9

<sup>31</sup> Independent Living Movement Ireland, 'Our Housing Rights: Tackling the Housing Crisis Disabled People Face' (13 September 2021) 5

<sup>32</sup> The Housing Agency, 'Summary of Social Housing Assessments 2022- Key Findings' (March 2023)

<sup>33</sup> The Housing Agency, 'Summary of Social Housing Assessments 2022- Key Findings' (March 2023); Joint Committee on Disability Matters, 'Ensuring Independent Living and the United Nations Convention on the Rights of Persons with Disabilities' (March 2022) 68

<sup>34</sup> Department of Housing, Local Government and Heritage; Department of Health and Department of Children, Equality, Disability, Integration and Youth, 'National Housing Strategy for Disabled People 2022-2027' (14 January 2022 (last updated 21 September 2023)) 24

<sup>35</sup> Edward Leonard, 'Reviewing Disabled Housing Policies in Ireland: Are these policies fit for purpose?' (*Public Policy* 22 November 2022) <<https://publicpolicy.ie/housing/reviewing-disabled-housing-policies-in-ireland-are-these-policies-fit-for-purpose/>> accessed 16 November 2023

<sup>36</sup> As I Am, 'Same Chance Report 2023' (2023) 5.

<sup>37</sup> National Platform of Self Advocates and Centre for Disability Law, NUI Galway, 'Our Lived Experiences of Housing and Transport' (*National Platform of Self Advocates*) <[http://thenationalplatform.ie/#:~:text=%E2%80%9COur%20Lived%20Experiences%20of%20Housing%20and%20Transport%E2%80%9D%20is%20a%20report,Ireland%2C%20Galway%20\(N.U.I.G.\).](http://thenationalplatform.ie/#:~:text=%E2%80%9COur%20Lived%20Experiences%20of%20Housing%20and%20Transport%E2%80%9D%20is%20a%20report,Ireland%2C%20Galway%20(N.U.I.G.).)> accessed 27 November 2023

<sup>38</sup> *ibid*

<sup>39</sup> *ibid*.

Disabled people have said that there are not enough supports to live independently and supports need to be more personalised, like personal assistance and personalised budgets.<sup>40</sup> 90% of disabled people are supported through general community services, which are not always fully accessible.<sup>41</sup> Only 9% are supported by specialist community-based disability services.<sup>42</sup> Overall, there are not enough supports available and the issue is going to get worse in future if no changes are made.<sup>43</sup> Supports are not made available based on a person's needs, but the service's capacity.<sup>44</sup> 85% of government's spending is on residential services and adult day services, leaving very little budget for personal assistance and personalised budgets.<sup>45</sup> Those who do use personal assistance want a broader range of supports, more hours and more control.<sup>46</sup> Disabled people living in different areas have access to different levels of funding and support, like personal assistance.<sup>47</sup> Disabled people are frustrated that the implementation of personalised budgets is taking long.<sup>48</sup> Information regarding supports is difficult to get and understand.<sup>49</sup> There is a lack of data on unmet needs for example there is no statistics on how many people need, but cannot use, personal assistant services.<sup>50</sup> It is believed to be a lot.<sup>51</sup>

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<sup>40</sup> ESIR, 'Inadequate Personal Assistance supports preventing many disabled people from living full and independent life' (*ESIR*, 2 December 2022) <<https://www.esri.ie/publications/personal-assistance-services-in-ireland-a-capability-approach-to-understanding-the>> accessed 10 December 2023 and Independent Living Movement Ireland, 'Our Housing Rights: Tackling the Housing Crisis Disabled People Face' (13 September 2021) 20

<sup>41</sup> Department of Health, 'Disability Capacity Review to 2032 – A Review of Social Care Demand and Capacity Requirements to 2032' (15 July 2021 (last updated 25 August 2021)) 16

<sup>42</sup> Department of Health, 'Disability Capacity Review to 2032 – A Review of Social Care Demand and Capacity Requirements to 2032'; European Commission, 'Ireland-2023 Country Report' (May 2023) 13

<sup>43</sup> Department of Health, 'Disability Capacity Review to 2032 – A Review of Social Care Demand and Capacity Requirements to 2032' (15 July 2021 (last updated 25 August 2021)) 19

<sup>44</sup> Independent Living Movement Ireland, 'Overview of the Department of Health "Disability Capacity Review 2032": A review of Disability Social Care Demand and Capacity Requirements up to 2032' (July 2021) 10 and ESRI, 'Specialist Support for Persons with Disabilities living in the Community' (September 2020) 11

<sup>45</sup> Department of Health, 'Disability Capacity Review to 2032 – A Review of Social Care Demand and Capacity Requirements to 2032' (15 July 2021 (last updated 25 August 2021)) 19

<sup>46</sup> Eamonn Carroll and Selina McCoy, 'Personal Assistance Services in Ireland: A Capability approach to understanding the Lived Experience of Disabled People' (2022) 2(4) MDPI; Sean Murray, 'Lack of personal assistance hours leaves people with disabilities confined to their homes' (*Irish Examiner*, 2 December 2022) <<https://www.irishexaminer.com/news/arid-41019299.html>> accessed 10 December 2023

<sup>47</sup> Nathan Johns, 'State failing to provide personal assistants to disabled people, activists say' (*The Irish Times*, 23 March 2023) <<https://www.irishtimes.com/ireland/social-affairs/2023/03/23/state-failing-to-provide-personal-assistants-to-disabled-people-activists-say/>> accessed 10 December 2023; ESRI, 'Specialist Support for Persons with Disabilities living in the Community' (September 2020) 11

<sup>48</sup> Independent Living Movement Ireland, 'ILMI Position Paper on the HSE Personalised Budgets Demonstration Models' (July 2021) 3

<sup>49</sup> Independent Living Movement Ireland, 'Our Housing Rights: Tackling the Housing Crisis Disabled People Face' (13 September 2021) 21

<sup>50</sup> Department of Health, 'Disability Capacity Review to 2032 – A Review of Social Care Demand and Capacity Requirements to 2032' (15 July 2021 (last updated 25 August 2021)) 26

<sup>51</sup> *ibid.*



## Key barriers and recommendations for reform

### There is no right to independent living.

- New legislation must be put in place recognising the right to independent living and inclusion in the community, without any limitations within 5 years.<sup>52</sup>
- Interim measures at local level must be put in place to facilitate the implementation of the UN guidelines ‘Moving peoples out of institutions’ and an immediate ban must be placed on institutionalisation and no new admissions to congregated settings may occur.<sup>53</sup>
- Disabled people who remain in institutions must be moved to housing of their choice as soon as possible, but within 5 years.<sup>54</sup>
- The definition and understanding of congregated settings (institutions) in all policies and legislation must be aligned with the Convention.

### There is inadequate accessible and affordable social housing.

- At least 1000 new accessible, affordable social houses must be built each year, designated for disabled people together with quarterly reviews and bi-annual progress reports.<sup>55</sup>
- These houses must be in different areas, of different types and close to services, providing disabled people with options.<sup>56</sup>
- Part M of the Building Regulations must be amended to make buildings fully accessible; not just visitable, without any limitation clause within 5 years.<sup>57</sup>

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<sup>52</sup> Joint Committee on Disability Matter, ‘Towards Harmonisation of National Legislation with the United Nations Convention on the Rights of Persons with Disabilities’ (January 2024) 93; Joint Committee on Disability Matters, ‘Ensuring Independent Living and the United Nations Convention on the Rights of Persons with Disabilities’ (March 2022) 40

<sup>53</sup> Joint Committee on Disability Matter, ‘Towards Harmonisation of National Legislation with the United Nations Convention on the Rights of Persons with Disabilities’ (January 2024) 93

<sup>54</sup> *ibid.*

<sup>55</sup> According to the Housing for All Strategy 10 000 new social housing must be built each year. According to the National Housing Strategy 10% of new social housing must be awarded to disabled people. Therefore 1000 social housing should be provided to disabled people each year. Department of Housing, Local Government and Heritage, ‘Housing for All -a New Housing Plan for Ireland Executive Summary’ (15 December 2021) 10 and Department of Housing, Local Government and Heritage; Department of Health and Department of Children, Equality, Disability, Integration and Youth, ‘National Housing Strategy for Disabled People 2022-2027’ (14 January 2022 (last updated 21 September 2023)) 60.

<sup>56</sup> Independent Living Movement Ireland, ‘Our Housing Rights: Tackling the Housing Crisis Disabled People Face’ (13 September 2021) 15.

<sup>57</sup> Independent Living Movement Ireland, ‘Our Housing Rights: Tackling the Housing Crisis Disabled People Face’ (13 September 2021) 15; Joint Committee on Disability Matters, ‘Ensuring Independent Living and the United Nations Convention on the Rights of Persons with Disabilities’ (March 2022) 109.

Mainstream services are not accessible.

- A new, improved National Disability Inclusion Strategy must be published by 2025. It should make sure that all mainstream services in the public and private sphere are fully accessible and universally designed, including the provision of reasonable accommodation, such as Irish Sign Language interpreters, with benchmarks, timeframes, and measurable goals.

There are insufficient personal assistance hours and personalised budgets are not widely available.

- Personal assistance hours must be increased by at least 20% for each disabled person.<sup>58</sup>
- A standardised personal assistance policy must be implemented allowing for a broad range of supports based on disabled people's complete control.<sup>59</sup>
- Data must be collected by end of 2024 on how many disabled people require personal assistance and personalised budgets and concrete plans must be put in place within 2 years to meet those needs.<sup>60</sup>
- A clear, standardised policy must be put in place by 2025 on how personalised budgets will be made available to all applicants.
- The budget for personal assistance and personalised budgets must be increased to 30% of the total government budget for disability within 2 years and 40% of the budget within 3 years.

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<sup>58</sup> Eamonn Carroll and Selina McCoy, 'Personal Assistance Services in Ireland: A Capability approach to understanding the Lived Experience of Disabled People' (2022) 2(4) MDPI

<sup>59</sup> Joint Committee on Disability Matter, 'Towards Harmonisation of National Legislation with the United Nations Convention on the Rights of Persons with Disabilities' (January 2024) 93; Independent Living Movement Ireland 'Achieving a right to personal assistance' (January 2019) 37

<sup>60</sup> ESRI, 'Specialist Support for Persons with Disabilities living in the Community' (September 2020) 51

## Article 24 – Education

This section focuses on disabled people's the right to education under Article 24 of the Convention. It starts by explaining the law and policy in Ireland on education for disabled people. The section then sets out what we know about disabled people's experience of education in Ireland. Lastly, it points out the areas in which Ireland isn't meeting its obligations under the Convention and gives recommendations for what needs to change.

### Overview of existing law and policy

The right to free primary education is provided for under the **Constitution**.<sup>61</sup> This right is guaranteed for everyone until the age of 18,<sup>62</sup> regardless of disability.<sup>63</sup>

According to the **Education Act 1998**, schools must provide students with education that is appropriate to their abilities and needs.<sup>64</sup> This means that schools need to ensure that the educational needs of all students, including disabled children, are identified, and met.<sup>65</sup> This applies to all levels of education.<sup>66</sup>

The **Education for Persons with Special Educational Needs Act 2004** is the only specific law on the education of disabled people. This Act mainly focuses on the education of disabled children, with only few references to disabled adults.<sup>67</sup> The Act requires that disabled children are educated in an inclusive environment, together with other children.<sup>68</sup> However, this does not apply if being in mainstream education would go against the 'best interests of the child',<sup>69</sup> or if the disability or needs of the child make impossible the effective education of the other children.<sup>70</sup> The Act sets out various services to be provided to disabled people including education plans,<sup>71</sup> special needs assessments,<sup>72</sup> and other services allowing the student to participate in and benefit from education.<sup>73</sup> However, although this Act was introduced in 2004, as of 2023 some of the sections do not have full legal force and some of the services<sup>74</sup> are not being provided.<sup>75</sup>

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<sup>61</sup> Constitution of Ireland 1937, art 42.4.

<sup>62</sup> *Sinnott v Minister for Education* [2001] IESC 63, [2001] 2 IR 505.

<sup>63</sup> Constitution of Ireland 1937, art 40.1.

<sup>64</sup> Education Act 1998, s 9.

<sup>65</sup> *ibid*, s 9(a).

<sup>66</sup> *ibid*, s 2(1)

<sup>67</sup> *ibid*, s 20(h), 20(i).

<sup>68</sup> Education for Persons with Special Educational Needs Act 2004, s 2.

<sup>69</sup> *ibid*, s 2(a).

<sup>70</sup> *ibid*, s 2(b).

<sup>71</sup> *ibid*, s 3.

<sup>72</sup> *ibid*, s 4.

<sup>73</sup> *ibid*, s 7.

<sup>74</sup> Such as the individual education plan provision.

<sup>75</sup> Dáil Deb 9 March 2023, vol 1035, col 3.

Schools at all levels must not discriminate based on disability when admitting students. According to the **Education (Admission to Schools) Act 2018**, schools must explicitly include in their admission policy a statement that the school shall not discriminate in its admission of a student based on the disability of the student or the person applying for them.<sup>76</sup>

The **Irish Sign Language Act** says that the Minister for Education must set up a scheme to provide Irish Sign Language support for children attending schools where the child's primary language is Irish Sign Language.<sup>77</sup>

### **Lived experience of disabled people in Ireland**

In a survey conducted by the DPO Coalition, 54% of participants said that they cannot easily access the same education and training opportunities as non-disabled people.<sup>78</sup>

In mainstream primary schools, disabled students are either taught together with the other children, or in special classes.<sup>79</sup> Some schools group disabled students in special classes where they spend most of their time, as a long-term measure, resulting in their exclusion.<sup>80</sup> Special Needs Assistants are allocated to assist teachers by supporting disabled students with significant care needs.<sup>81</sup> Often in practice though, Special Needs Assistants are given insufficient hours and training to adequately support disabled children.<sup>82</sup> A general concern is also that the current qualification required for Special Needs Assistants is too low.<sup>83</sup>

In 2022, the Minister finally set up the scheme to provide Irish Sign Language for a child attending mainstream school.<sup>84</sup> The scheme was announced after a High Court case was taken by a family whose child did not have access to an Irish Sign

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<sup>76</sup> Education (Admission to Schools) Act 2018, s 61(1)(f).

<sup>77</sup> Irish Sign Language Act 2017, s 5(b).

<sup>78</sup> Disabled Persons Organisation (DPO) Coalition, 'Consultation Report November 2022: The views and lived experience of disabled people in Ireland in response to the UN Convention on the Rights of Persons with Disabilities' (2023) 31.

<sup>79</sup> Roisin Webb, 'ANED country report on equality of educational and training opportunities for young disabled people – Country: Ireland' (2010) 23.

<sup>80</sup> National Council for Special Education, "Policy Advice on Special Schools and Classes: An Inclusive Education for an Inclusive Society?" (October 2019) 28.

<sup>81</sup> National Council for Special Education, 'Special Needs Assistant (SNA) Scheme: Information for Parents/Guardians of Children and Young People with Special Educational Needs' (2015) 1.

<sup>82</sup> Early Childhood Ireland, 'Submission to the Joint Committee on Education and Social Protection: The Role of Special Needs Assistants in Early Childhood Care and Education Settings' (2021) 2.

<sup>83</sup> *ibid.*

<sup>84</sup> Department of Education, Irish Sign Language (ISL) Scheme (2 March 2022)

<<https://www.gov.ie/en/publication/3283c-irish-sign-language-isl-scheme/>> accessed 23 November 2023.

Language interpreter in the classroom.<sup>85</sup> The eligibility requirements for accessing the scheme, however, focus on a medical definition of deafness which does not meet the requirements of the Irish Sign Language Act and leaves out many children whose primary language is Irish Sign Language.<sup>86</sup>

Not all disabled children attend mainstream primary schools, some go to special schools.<sup>87</sup> Currently there are about 140 special schools in Ireland,<sup>88</sup> however every year hundreds of disabled children do not have a school place.<sup>89</sup>

Special needs assessments are not always accessible. Parents are having to wait up to 36 months for an assessment.<sup>90</sup> Some parents decide to bring the matter to court while others pay for assessments to be done privately.<sup>91</sup> After the assessment is completed, the services that they require are either not accessible or not available.<sup>92</sup> In 2021 the Department of Education published guidelines on the use of reduced school days.<sup>93</sup> However, over 1044 students across primary, post-primary and special schools were on a reduced timetable during the 2022/2023 academic year, of which 68% were disabled.<sup>94</sup>

In 2016, only 29.6% of “working-age” (disabled adults had a third-level educational qualification, compared to 47.0% among those without disabilities.<sup>95</sup> Even though higher education institutions have support staff for disabled students, in the last ten years the number of students allocated per disability support staff member has increased by over 44%, resulting in overstretching.<sup>96</sup>

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<sup>85</sup> Elaine Loughlin, ‘High Court settlement ends decade-long battle for family of Calum Geary’ (Irish Examiner, 4 May 2023) <[<sup>86</sup> Joint Committee on Disability Matters, \*Towards harmonisation of national legislation with the United Nations Convention on the Rights of Persons with Disabilities\* \(33/DM/16, 2024\) para 229.](https://www.irishexaminer.com/news/munster/arid-41131084.html#:~:text=The%20Cork%20family%20first%20began%20campaigning%20when%20Calum%20entered%20primary%20school.&text=The%20family%20of%20profoundly%20deaf,education%20has%20had%20n%20them.> accessed 27 February 2024.</a></p></div><div data-bbox=)

<sup>87</sup> Citizens Information, ‘Special needs education’ (*Citizens Information*, 6 December 2022) <<https://www.citizensinformation.ie/en/education/the-irish-education-system/special-education/>> accessed 23 November 2023.

<sup>88</sup> *ibid.*

<sup>89</sup> Mícheál Lehane, ‘Lack of school places for children with special needs raised in Dáil’ *RTE News* (23 June 2022) available at <<https://www.rte.ie/news/ireland/2022/0623/1306479-special-needs-school-places/>>.

<sup>90</sup> Dáil Deb 9 March 2023, vol 1035, col 3.

<sup>91</sup> *ibid.*

<sup>92</sup> *ibid.*

<sup>93</sup> Department of Education, ‘Guidelines for the use of Reduced School Days in Schools’ (16 September 2021).

<sup>94</sup> Katherine Donnelly, ‘Pupils with special needs and Traveller and Roma children more likely to be on reduced school hours’ *Irish Independent* (Dublin, 21 September 2023) available at <<https://www.independent.ie/irish-news/pupils-with-special-needs-and-traveller-and-roma-children-more-likely-to-be-on-reduced-school-hours/a938263368.html>> accessed 23 November 2023.

<sup>95</sup> Elish Kelly and Bertrand Maître, ‘Identification of Skills Gaps Among Persons with Disabilities and their Employment Prospects’ (*Economic & Social Research Institute*, 22 September 2021) 37.

<sup>96</sup> AHEAD, ‘Students with Disabilities Engaged with Support Services in Higher Education in Ireland 2020/21’ (AHEAD, 2022) 61.

## Key barriers and recommendations for reform

### The right to inclusive education is not recognised in law nor fully implemented in practice.

- The Department of Education must develop a national plan for inclusive education. The plan should include, among others, practical measures to deliver inclusive education, increased financial supports for schools, and coordination of relevant departments and resources. As part of the plan, the Department should develop indicators on inclusion in schools and provide, and regularly update, data on the number of students in inclusive and segregated education.<sup>97</sup> In drafting the plan, the Department should consult DPOs and relevant stakeholders.<sup>98</sup>
- The Minister for Education should sign a commencement order for all the sections of the Education for Persons with Special Educational Needs Act 2004 which have not been given full legal force yet. Adequate resources should be put aside to ensure that the services provided for in the Act are accessible and available.
- A bill recognising the right to inclusive education at all levels of education should be introduced to amend the Education for Persons with Special Educational Needs Act 2004. This bill should include a clear definition of inclusive education, which is in line with the one in the Convention.<sup>99</sup> The bill should also recognise the right of people with disabilities to seek individualised supports in education, which should be provided through reasonable accommodation.<sup>100</sup>
- Disabled children should be given access to an individual support system in schools and, at a minimum, students should be allocated enough access hours with their disability support staff. The practice of sharing Special Needs Assistants between students should be ended. The practices of placing disabled children within special classes long-term or putting them on reduced timetables should be ended. To do this, a national plan should be drafted to transition to an inclusive education system.<sup>101</sup> Supports for home tuition and alternative modes of education should be increased for children who cannot be educated in the mainstream system.
- The new scheme for ISL in-school support for deaf children should be revised. The eligibility requirements should be adjusted and match the Irish Sign Language Act, making sure that all children whose primary language is Irish

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<sup>97</sup> Joint Committee on Disability Matters, *Towards harmonisation of national legislation with the United Nations Convention on the Rights of Persons with Disabilities* (33/DM/16, 2024) para 215.

<sup>98</sup> *Ibid*, para 215.

<sup>99</sup> *ibid*, recommendation 69.

<sup>100</sup> *ibid*, recommendation 67(d).

<sup>101</sup> United Nations Office of the High Commissioner for Human Rights, 'The Human Rights Indicators on the Convention on the Rights of Persons with Disabilities. Article 24: Illustrative indicators on education' (United Nations, 2020).

Sign Language can access the scheme. For the revision, the Deaf community and their representative DPOs should be consulted.

There is not enough focus on higher education for disabled adults.

- In higher education, campuses should be fully accessible.
- The process to obtain disability support in universities should be made less medicalised and easier to access.
- A national strategy to increase higher education attendance by disabled students should be launched and progress should be monitored by collecting data on the enrolment and graduation rates of disabled students.

Education staff working with disabled students need more training.

- Teachers and education staff working at all levels of education should be required to undertake professional development training to enable them to cater to the needs of disabled students. Such training should be designed and delivered by disabled people and take place both before and during the employment. The training should focus on how to manage other adults<sup>102</sup> in the classroom, Universal Design for Learning,<sup>103</sup> and inclusive teaching methods.
- The qualifications required for Special Needs Assistants should be set in line with FETAC Level 6,<sup>104</sup> and additional training should be provided to them in line with the needs of each student.<sup>105</sup>

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<sup>102</sup> Such as Special Needs Assistants.

<sup>103</sup> Universal Design for Learning (UDL) is an educational approach that wants to create a learning environment which is flexible and inclusive by accommodating diverse learning styles and abilities in both teaching and assessments; Ahead, 'Universal Design for Learning' (*Ahead*) <<https://www.ahead.ie/udl>> accessed 12 December 2023.

<sup>104</sup> Currently the minimum qualification needed is Level 3 NFQ, at least three grade Ds in the Junior Certificate, or an equivalent certification; Forus Training, 'How do I become an SNA' (*Forus Training*, 20 September 2022) <<https://forustraining.ie/latest-news/how-do-i-become-an-sna/#:~:text=The%20minimum%20required%20qualification%20for,Or%20an%20equivalent%20qualification>> accessed 12 December 2023.

<sup>105</sup> National Council for Special Education, 'Comprehensive Review of the Special Needs Assistant Scheme: A New School Inclusion Model to Deliver the Right Supports at the Right Time to Students with Additional Care Needs – NCSE Policy Advice Paper No. 6' (2018) 112.

## Article 27 – Work and Employment

### Overview of existing law and policy

Discrimination on the grounds of disability is prohibited under **the Employment Equality Acts**.<sup>106</sup> Under the Act a person cannot be treated less favourably based on disability at any stage of the employment process from advertising or recruitment through to dismissal. Disability is one of nine separate grounds that are listed in the Act.<sup>107</sup> If a disabled woman is discriminated against, she would need to prove discrimination on the grounds of gender and/or disability separately.

The **Employment Equality Acts** also place a duty on the employer to make reasonable accommodations to enable disabled people to work, as long as it does not impose a 'disproportionate burden' on the employer.<sup>108</sup> However, the law does not expressly say that failing to provide this is discrimination or that the employer has to consult with the employee about what is required.<sup>109</sup> While the Acts require equal pay for equal work in most situations,<sup>110</sup> an employer may pay a disabled person less where the amount of work the person has done is less than what another worker did (or could have done).<sup>111</sup>

The **Disability Act 2005** sets minimum employment targets for disabled workers in the Public Service.<sup>112</sup> Set at 3% now, these targets will increase to 4.5% during 2024 then to 6% from 2025.<sup>113</sup> The **Roadmap for Social Inclusion 2020-2025** sets an employment sub-target 'to increase the employment rate of people with a disability from the current level of 22.3% (Census 2016) to 25% by Census 2021 and 33% by Census 2026'.<sup>114</sup>

The **Comprehensive Employment Strategy for People with Disabilities 2015-2024**<sup>115</sup> aims to move away from sheltered workshops and towards supporting disabled people to participate in community life, including employment.

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<sup>106</sup> Employment Equality Act 1998.

<sup>107</sup> *ibid*, s 6(2).

<sup>108</sup> *ibid*, s 16; See also Employers for Change and Ibec 'Guide to Reasonable Accommodation' <[https://employersforchange.ie/userfiles/files/EFC\\_ReasonableAccommodationsGuide%20v5.pdf](https://employersforchange.ie/userfiles/files/EFC_ReasonableAccommodationsGuide%20v5.pdf)> accessed 21 November 2023.

<sup>109</sup> Lucy-Ann Buckley and Shivaun Quinlivan 'Reasonable accommodation in Irish equality law: an incomplete transformation' (2021) 41 (1) *Legal Studies*; National Disability Authority 'Reasonable Accommodations: Obstacles and Opportunities to the Employment of Persons with a Disability' (November 2019).

<sup>110</sup> Employment Equality Act 1998, ss17 and 19.

<sup>111</sup> *Ibid*, s 35.

<sup>112</sup> Disability Act 2005, ss48 -51.

<sup>113</sup> Assisted Decision-Making (Capacity) (Amendment) Act 2022, s101.

<sup>114</sup> Government of Ireland 'Roadmap for Social Inclusion 2020 – 2025: Ambition, Goals, Commitments' (2020) 55.

<sup>115</sup> Government of Ireland *Comprehensive Employment Strategy for People with Disabilities 2015-2024*, (Dublin: Stationery Office 2015).



The **'Make Work Pay'** report<sup>116</sup> made changes to medical card, travel card<sup>117</sup> and secondary benefit eligibility<sup>118</sup> and added a fast-track-back to disability payments in the first 12 months of employment.<sup>119</sup> There are a number of employer supports available<sup>120</sup> and Employers for Change provides an employer disability information service.<sup>121</sup>

## Lived experience of disabled people in Ireland

The 2022 Census changed the way data on disability was collected<sup>122</sup> meaning more people are identified as disabled<sup>123</sup>. Compared with the general population, disabled people have a lower rate of employment (34% compared with 56%)<sup>124</sup> and a higher rate of unemployment (13% compared with 8%)<sup>125</sup>. The national employment rate at the same time was 73%<sup>126</sup>. Unfortunately, the quarterly Labour Force Survey does not publish its figures for disabled people.<sup>127</sup> But, European data show Ireland has the widest employment gap in Europe<sup>128</sup> with the Irish full-time employment rate for

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<sup>116</sup> Department of Social Protection 'Make Work Pay for People with Disabilities Report to Government 2017' (2019) <<https://assets.gov.ie/10940/c4c20348897148eb9a50ac2755fd680f.pdf>> accessed 6 December 2023.

<sup>117</sup> National Disability Authority *Overview of UNCRPD Article 27 in Ireland Right to Work and Employment* (2020) 25.

<sup>118</sup> For example, Household Benefits Package and Fuel Allowance.

<sup>119</sup> National Disability Authority *Overview of UNCRPD Article 27 in Ireland Right to Work and Employment* (2020).

<sup>120</sup> Government of Ireland 'Operational Guidelines: Wage Subsidy Scheme' (2023); Government of Ireland 'Reasonable Accommodation Fund' (2023) <[www.gov.ie/en/service/62fd96-reasonable-accommodation-fund](http://www.gov.ie/en/service/62fd96-reasonable-accommodation-fund)> accessed 1 November 2023; Government of Ireland 'Disability Awareness Support Scheme' (2023) <[www.gov.ie/en/service/3970b5-disability-awareness-support-scheme](http://www.gov.ie/en/service/3970b5-disability-awareness-support-scheme)> accessed 1 November 2023; Citizens Information 'Grants to retain employees with disabilities' (2022) <[www.citizensinformation.ie/en/employment/employment-and-disability/grants-to-retain-employees-with-disabilities/](http://www.citizensinformation.ie/en/employment/employment-and-disability/grants-to-retain-employees-with-disabilities/)> accessed 2 November 2023.

<sup>121</sup> Employers for Change 'Creating Equity Within the Workplace' (Open Doors, 2023) <<https://employersforchange.ie/>> accessed 2 November 2023.

<sup>122</sup> Central Statistics Office 'Census 2022 Profile 4 - Disability, Health and Carers: Background Notes' <<https://www.cso.ie/en/releasesandpublications/ep/p-cpp4/census2022profile4-disabilityhealthandcarers/backgroundnotes/>> accessed 20 November 2023; Central Statistics Office, 'Census 2022 Profile 4 – Disability, Health and Carers: Disability' <<https://www.cso.ie/en/releasesandpublications/ep/p-cpp4/census2022profile4-disabilityhealthandcarers/disability/>> accessed 20 November 2023.

<sup>123</sup> From 13.5% in 2016 to 22% in 2022; Central Statistics Office, 'Census of Population 2016 – Profile 9 Health, Disability and Carers: Disability' (CSO 2023) <<https://www.cso.ie/en/releasesandpublications/ep/p-cp9hdc/p8hdc/p9d/>> accessed 14 November 2023; Central Statistics Office, 'Census 2022 Profile 4 - Disability, Health and Carers: Key Findings' (CSO 2023) <<https://www.cso.ie/en/releasesandpublications/ep/p-cpp4/census2022profile4-disabilityhealthandcarers/keyfindings/>> accessed 14 November 2023.

<sup>124</sup> Central Statistics Office, 'Census 2022 Profile 4 - Disability, Health and Carers: Disability and Everyday Living' (CSO 2023) <<https://www.cso.ie/en/releasesandpublications/ep/p-cpp4/census2022profile4-disabilityhealthandcarers/keyfindings/>> accessed 15 November 2023.

<sup>125</sup> *ibid.*

<sup>126</sup> Central Statistics Office, 'Labour Force Survey Quarter 1 2022: Summary Results' <<https://www.cso.ie/en/releasesandpublications/ep/p-lfs/labourforcesurveyquarter12022/summaryresults/>> accessed 15 November 2021.

<sup>127</sup> See Central Statistics Office 'Labour Force Survey' (2023)

<<https://www.cso.ie/en/methods/surveyforms/labourforcesurvey/>> accessed 5 December 2023.

<sup>128</sup> Eurostat 'Disability employment gap by level of activity limitation and sex (source EU-SILC)' (2023) <[https://ec.europa.eu/eurostat/databrowser/view/HLTH\\_DLM200/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/HLTH_DLM200/default/table?lang=en)> accessed 22

disabled women at 15% and for disabled people with 'high support needs' at 17.7%.<sup>129</sup>

A 2006 survey of disabled people showed that 85% of participants had been in work. 37% of those not working said they would like to work if the circumstances were right.<sup>130</sup> Half of the people in a 2021 survey who remained out of work after acquiring an impairment / condition wanted to be in work, but there was not enough support.<sup>131</sup> At least one third of people in receipt of the Disability Allowance would like to work.<sup>132</sup> 70% of disabled people acquire their impairment or condition when they are of working age<sup>133</sup> and disabled people are more likely to exit and less likely to enter work.<sup>134</sup> This affects disabled women differently and they have added barriers based on gender discrimination and childcare requirements.<sup>135</sup> Barriers to work include:

- Lack of flexibility<sup>136</sup>
- Lack of transport<sup>137</sup>
- Lack personal assistants (PAs)<sup>138</sup>

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November 2023; The employment rate of disabled people across the European Union in 2020 was 51%: Marie Lecerf, 'Employment and disability in the European Union' (European Parliamentary Research Service, May 2020) <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651932/EPRS\\_BRI\(2020\)651932\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651932/EPRS_BRI(2020)651932_EN.pdf)> accessed 15 November 2023.

<sup>129</sup> Joint Committee on Disability Matters 'Towards harmonisation of national legislation with the United Nations Convention on the Rights of Persons with Disabilities' (Houses of the Oireachtas, 2024) 126.

<sup>130</sup> Dorothy Watson and Brian Nolan *A Social Portrait of People with Disabilities in Ireland* (Department of Social Protection and ESRI, Dublin 2011).

<sup>131</sup> National Disability Authority, 'Policy Advice on Vocational Rehabilitation Provision in Ireland' (NDA, September 2021) 20-23.

<sup>132</sup> Joint Committee on Disability Matters 'Towards harmonisation of national legislation with the United Nations Convention on the Rights of Persons with Disabilities' (Houses of the Oireachtas, 2024) 126.

<sup>133</sup> Dorothy Watson, Martina Lawless and Bertrand Maître *Employment Transitions Among People with Disabilities in Ireland: An analysis of the quarterly national household survey, 2010-2015* (Research Series Number 58, ESRI 2017) 28.

<sup>134</sup> 5% of disabled people exit a job in any quarter compared with 2% of others while 2% of disabled people enter work from unemployment in any quarter compared with 8% of others: NDA 'NDA Policy Advice on Vocational Rehabilitation Provision in Ireland' (NDA, September 2021) 19.

<sup>135</sup> Including the assumption that disabled women are recipients of care who don't need to work and gendered work role expectations: National Women's Council of Ireland 'Disability and Women in Ireland "Building Solidarity and Inclusion"' (October 2008).

<sup>136</sup> Dorothy Watson, Joanne Banks. Seán Lyons *Educational and Employment Experiences of People with a Disability in Ireland: An Analysis of the National Disability Survey* (ESRI Dublin, 2015) x; Disabled Persons Organisation (DPO) Coalition Consultation Report (November 2022) 28; CES 'Ireland's Draft State Report under the United Nations Convention on the Rights of Persons with Disabilities Report from Public and Stakeholder Consultations' (May 2021) 13.

<sup>137</sup> National Disability Authority, 'Comprehensive Employment Strategy NDA Year-end Assessment 2022' (June 2023) 21; Congress 'Removing Barriers to Progress for People with Disabilities' (30 January 2018) <<https://www.ictu.ie/blog/removing-barriers-progress-people-disabilities>> accessed 16 November 2023; Citizens' Information Board "'Make Work Pay" Component of the Comprehensive Employment Strategy (CES) for People with Disabilities: A Submission by the Citizens Information Board' (September 2016).

<sup>138</sup> Eamonn Carroll and Selina McCoy 'Personal Assistance Services in Ireland: A Capability Approach to Understanding the Lived Experience of Disabled People' (2022) 2(4) *Disabilities* 694; ILMI 'ILMI Summary of the Green Paper on DA Consultations' (ILMI 2023) <<https://ilmi.ie/ilmi-summary-of-the-green-paper-on-da-consultations/>> accessed 20 November 2023; Citizens' Information Board "'Make Work Pay" Component of the

- Inaccessible premises,<sup>139</sup>
- Loss of benefits,<sup>140</sup>
- Inaccessible information,<sup>141</sup>
- Losing educational supports,<sup>142</sup>
- Employer attitudes,<sup>143</sup>
- Stigma and harassment in the workplace,<sup>144</sup>
- Employee reluctance to disclose their impairment and ask for reasonable accommodations,<sup>145</sup>
- Poor employer up-take of the various supports designed to help overcome these barriers.<sup>146</sup>

The highest rate of unemployment in the 2022 Census was amongst those with intellectual impairments.<sup>147</sup> This group experiences multiple barriers to accessing vocational training.<sup>148</sup> 70% of workers told an Inclusion Ireland survey they need more support for on-the-job learning.<sup>149</sup> AHEAD has published guidance on making further education and training more accessible, but it is too soon to know what effect that will have.<sup>150</sup>

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Comprehensive Employment Strategy (CES) for People with Disabilities: A Submission by the Citizens Information Board' (September 2016).

<sup>139</sup> Disabled Persons Organisation (DPO) Coalition, 'Consultation Report November 2022: The views and lived experience of disabled people in Ireland in response to the UN Convention on the Rights of Persons with Disabilities' (2023) 31; CES 'Ireland's Draft State Report under the United Nations Convention on the Rights of Persons with Disabilities Report from Public and Stakeholder Consultations' (May 2021) 13.

<sup>140</sup> CES 'Ireland's Draft State Report under the United Nations Convention on the Rights of Persons with Disabilities Report from Public and Stakeholder Consultations' (May 2021) 13; Joint Committee on Disability Matters 'Towards harmonisation of national legislation with the United Nations Convention on the Rights of Persons with Disabilities' (Houses of the Oireachtas, 2024) 126.

<sup>141</sup> Department of Social Protection 'Review of the Reasonable Accommodation Fund and Disability Awareness Support Scheme' (August 2023) 27; Disabled Persons Organisation (DPO) Coalition Consultation Report (November 2022) 28.

<sup>142</sup> Independent Living Movement of Ireland (ILMI) 'Observations on Ireland's first draft report to the UN under the Convention on the Rights of Persons with Disabilities.' (2022) 21.

<sup>143</sup> Department of Social Protection 'Review of the Reasonable Accommodation Fund and Disability Awareness Support Scheme' (August 2023) 16; CES 'Ireland's Draft State Report under the United Nations Convention on the Rights of Persons with Disabilities Report from Public and Stakeholder Consultations' (May 2021) 13.

<sup>144</sup> CES 'Ireland's Draft State Report under the United Nations Convention on the Rights of Persons with Disabilities Report from Public and Stakeholder Consultations' (May 2021) 13.

<sup>145</sup> Department of Social Protection 'Review of the Reasonable Accommodation Fund and Disability Awareness Support Scheme' (August 2023) 27; National Disability Authority 'Reasonable Accommodations: Obstacles and Opportunities to the Employment of Persons with a Disability' (November 2019) 59.

<sup>146</sup> Department of Social Protection 'Review of the Reasonable Accommodation Fund and Disability Awareness Support Scheme' (August 2023) 19-21; Government of Ireland 'Green Paper on Disability Reform – A Public Consultation to Reform Disability Payments in Ireland' (2023); OECD 'Disability, Work and Inclusion in Ireland: Engaging and Supporting Employers' (OECD iLibrary, 2021) <[https://www.oecd-ilibrary.org/employment/disability-work-and-inclusion-in-ireland\\_74b45baa-en](https://www.oecd-ilibrary.org/employment/disability-work-and-inclusion-in-ireland_74b45baa-en)> accessed 15 November 2023.

<sup>147</sup> Central Statistics Office, 'Census 2022 Profile 4 - Disability, Health and Carers: Disability and Everyday Living' (CSO 2023) <<https://www.cso.ie/en/releasesandpublications/ep/p-cpp4/census2022profile4-disabilityhealthandcarers/keyfindings/>> accessed 15 November 2023.

<sup>148</sup> Helena Doody, *Inclusive Education; Challenges and barriers for people with intellectual Disabilities Accessing Further Education* (Maynooth University, 2015).

<sup>149</sup> Inclusion Ireland, 'Budget Submission 2024' (Inclusion Ireland, June 2023).

<sup>150</sup> Ann Heelan, Dr Thomas J. Tobin and Dara Ryder *UDL for FET Practitioners Guidance for Implementing Universal Design for Learning in Irish Further Education and Training* (SOLAS, Dublin 2021).

Disabled workers report being stuck in low-paid roles<sup>151</sup> and not receiving the same pay and benefits as their non-disabled colleagues.<sup>152</sup> Disabled people participate 15-17% less often in on-the-job training<sup>153</sup> and are under-represented in apprenticeships.<sup>154</sup>

Data on sheltered employment are difficult to access. Health Service Executive (HSE) reporting in 2020 showed that there were 2,513 disabled people doing work or work-like activity through Day Centres<sup>155</sup> None of the three service plans since has reported on work or work-like activity.<sup>156</sup> This may not mean that there are no longer people in sheltered employment.

## **Key barriers and recommendations for reform**

### Disabled people face discrimination finding work and accessing training and promotion on-the-job.

- Amend the Employment Equality Acts to recognise intersecting grounds of discrimination.
- Amend legislation to ensure that denying reasonable accommodation is recognised as a form of discrimination and to ensure that employers must consult with employees about reasonable accommodations.
- Include career progression and continued supports for working disabled people in the next Comprehensive Employment Strategy.<sup>157</sup>

### There is not enough accessible work for disabled people.

- Increase the Public Sector quotas to 10% and extend quotas into the private sector.<sup>158</sup>
- Provide personal assistants (PAs) for work.
- Address issues with transport as indicated in the Comprehensive Employment Strategy.
- Implement the 'seamless supports' from the Comprehensive Employment

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<sup>151</sup> CES 'Ireland's Draft State Report under the United Nations Convention on the Rights of Persons with Disabilities Report from Public and Stakeholder Consultations' (May 2021) 13.

<sup>152</sup> Disabled Persons Organisation (DPO) Coalition, 'Consultation Report November 2022: The views and lived experience of disabled people in Ireland in response to the UN Convention on the Rights of Persons with Disabilities' (2023) 29.

<sup>153</sup> OECD 'Disability, Work and Inclusion in Ireland: Engaging and Supporting Employers' (OECD iLibrary, 2021) <[https://www.oecd-ilibrary.org/employment/disability-work-and-inclusion-in-ireland\\_74b45baa-en](https://www.oecd-ilibrary.org/employment/disability-work-and-inclusion-in-ireland_74b45baa-en)> accessed 15 November 2023.

<sup>154</sup> 2% women and 2.8% disabled people: Generation Apprenticeship, 'Review of pathways to participation in apprenticeship' (SOLAS, 2018), which was published with the aim of increasing participation by diverse groups.

<sup>155</sup> HSE *National Service Plan 2020* (Dublin, 2019) 136.

<sup>156</sup> HSE *National Service Plan 2021-23* (Dublin, 2020-22); Note: The Government has committed to regularising the work in these kinds of centres: Government of Ireland 'Comprehensive Employment Strategy: Phase Two Action Plan 2019-2021' (Stationery Office Dublin, 2019) 2.20.

<sup>157</sup> Joint Committee on Disability Matters 'Towards harmonisation of national legislation with the United Nations Convention on the Rights of Persons with Disabilities' (Houses of the Oireachtas, 2024) 127.

<sup>158</sup> *ibid*, 126 and 130.

### Strategy

- Make medical card and travel card universally available for disabled people.
- Provide regular training for employers<sup>159</sup> about reasonable accommodations raising. Raise awareness with employers about discrimination, accessibility, flexible working arrangements and the supports that are available to them.
- Increase the employer subsidies under the Wage Subsidy Scheme

### Disabled people find it hard to get back into work following an accident or illness and do not have equal access to vocational training.

- Implement the Universal Design for Learning guidance.
- Implement the rehabilitation scheme from the Comprehensive Employment Strategy: Phase Two Action Plan.

### Disabled people receive unequal pay.

- Amend the Employment Equality Acts to remove the exemption which allows this.

### Employment targets are too low, and we do not know how many disabled people are doing work in sheltered employment.

- The government must explain how the employment targets for disabled people will now be accurately compared.
- Disability statistics should be included in the Labour Force Reports, and reporting on work or work-like activity in day centres should resume.

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<sup>159</sup> *ibid*, 129.

## Article 28 - Adequate standard of living and social protection

This section will set out the current law on social welfare for disabled people in Ireland. It will then describe disabled people's experiences on the ground with social welfare. Finally, it will say what Ireland needs to change in our social welfare system for disabled people to make sure it is in line with Article 28 of the Convention.

### Overview of existing law and policy

Ireland has some social welfare payments for disabled people. The Social Welfare Consolidation Act is the main law that sets out most of these payments.<sup>160</sup> Some of these are only available if a disabled person has paid into social insurance known as PRSI. Most social welfare payments for disabled people are means tested. This means that the person who is applying for the allowance must have a total income below a certain amount.<sup>161</sup>

Benefits which do not require PRSI contributions:

- Disability allowance is means tested and is available to disabled people aged between 16 to 66 years old. It is paid to people who cannot get their main income from work due to their disability.<sup>162</sup> A disabled person can work and earn up to €165 a week without their disability allowance being affected.
- Blind Pension is available to blind and visually impaired persons who are over the age of 66. It is means tested and paid at the same rate as disability allowance.<sup>163</sup>
- Domiciliary care allowance is a payment to parents for children with severe disabilities under 16 years of age. It is not means tested.<sup>164</sup>

Benefits which require PRSI contributions:

- Invalidity Pension is a payment given to a person who can no longer work because of an acquired long-term illness or disability.<sup>165</sup>
- Disablement Benefit is a payment to a person who acquires a disability during their work (e.g. due to a work-related accident).<sup>166</sup>

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<sup>160</sup> Social Welfare Consolidation Act 2005

<sup>161</sup> Citizens Information 'Disability Allowance' (Citizens Information, 20 Nov 2023)

<sup>162</sup> <https://www.citizensinformation.ie/en/social-welfare/social-welfare-payments/disability-and-illness/disability-allowance/> accessed 11 December 2023

<sup>163</sup> Social Welfare Consolidation Act 2005, s 210

<sup>164</sup> Social Welfare Consolidation Act 2005, s 161

<sup>165</sup> Social welfare and Pensions Act 2008, s 15

<sup>166</sup> Social Welfare Consolidation Act 2005, s 118

<sup>167</sup> Social Welfare Consolidation Act 2005, s 75

- Partial Capacity Benefit is available when a person can no longer work full time due to an acquired long-term illness or disability.<sup>167</sup>

There are other supplementary benefits available to disabled people through social welfare. These benefits are not specifically designed for disabled people but may help them to cover extra costs they have due to their disability. These benefits cover areas such as medical expenses,<sup>168</sup> household costs<sup>169</sup> and travel expenses.<sup>170</sup>

Some people who become disabled later in their life and have already paid PRSI while working can get paid more social welfare than people who are born with disabilities that mean they cannot work. The government has published a Green Paper with ideas for changes to the social welfare system.<sup>171</sup> They want to get rid of the differences in payment between people who worked before they became disabled and people who did not. The Green Paper has a plan to introduce a three-step system of social welfare payments for disabled people based on how able they are to take up paid work. The approach proposed in this Green Paper is like the system in the UK which was criticised by the UN Committee on the Rights of People with Disabilities.<sup>172</sup>

The Roadmap for Social Inclusion 2020-2025 is a government policy which aims to tackle the cost of disability and help disabled people have a better standard of living.<sup>173</sup> It hopes to reduce the percentage of disabled people at risk of poverty and social exclusion from 36.9% in 2018 to 28.7% by 2025 and to 22.7% by no later than 2030.<sup>174</sup>

## Lived experience of disabled people in Ireland

The DPO Coalition report found that disabled people often live in financial instability due to the cost of disability.<sup>175</sup> The report found that 42% of survey participants had

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<sup>167</sup> Social Welfare and Pensions Act 2010, s 12

<sup>168</sup> For example, Medical Card, GP Visit Card, Long-term Illness Scheme and Mobility Aid.

<sup>169</sup> For example, Fuel Allowance, Social Housing, Household Benefits Package, Living Alone Grant and Housing Adaption Grant and Rent Supplement..

<sup>170</sup> For example, Free Travel Scheme and Retro-Fit Accessibility Programme.

<sup>171</sup> Department of Social Protection *Green Paper on Disability Reform: A Public Consultation to Reform Disability Payments in Ireland* (Dublin, 2023) <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/270938/7c444ddf-acfc-4d28-ad82-c7b1baa37cc1.pdf#page=null>> accessed 05 December 2023

<sup>172</sup> UN Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland 2017 (CRPD/C/GBR/CO/1)

<sup>173</sup> Government of Ireland *Roadmap for Social Inclusion 2020-2025: Ambitions, Goals and Commitments* (Dublin, 2020)

<sup>174</sup> *ibid*, 56.

<sup>175</sup> Disabled Persons Organisation (DPO) Coalition, 'Consultation Report November 2022: The views and lived experience of disabled people in Ireland in response to the UN Convention on the Rights of Persons with Disabilities' (2023).

no access to disability support payments, personal assistance, mobility aids, assistive devices, and accessible technology.<sup>176</sup> This adds to their cost of disability. Disabled people living on their own have also reported having to ask family members for help with paying basic bills such as rent.<sup>177</sup>

Over 161,000 disabled people currently get disability allowance.<sup>178</sup> The Minister has admitted that there is a backlog in assessing claims for disability allowance.<sup>179</sup> In 2022 more first time disability allowance applications were rejected than accepted but over half of those who appealed were granted disability allowance.<sup>180</sup> Most disability payments are means tested and this includes any income a disabled person's husband or wife has. This means that disabled people are often afraid of getting married in case they lose their disability benefits.<sup>181</sup>

Social welfare payments related to transport are rare for disabled people. The DPO Coalition Report found that 52% of disabled people had limited access to public transport.<sup>182</sup> Previously, social welfare payments like the motorised transport grant and mobility grant could be used by disabled people to pay for the higher costs of accessible taxis where no accessible public transport was available. However, these payment schemes are now closed to new applicants, which makes it harder for disabled people to travel independently.<sup>183</sup>

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<sup>176</sup> *ibid.*

<sup>177</sup> Independent Living Movement Ireland (ILMI), *Our Housing Rights: Tackling the Housing Crisis Disabled People Face* (Dublin, 2021).

<sup>178</sup> *Dáil Deb* 7 Nov 2023, Question 701

<sup>179</sup> *Dáil Deb* 14 November 2023, Question 310

<sup>180</sup> *Dáil Deb* 18 Jan 2023, Question 923

<sup>181</sup> Niamh Ní Hoireabhaird 'I'm so excited about getting married, but it means I could lose all my disability allowance' *Irish Independent* (Dublin, 14 Sep 2023) <<https://www.independent.ie/life/im-so-excited-about-getting-married-but-it-means-i-could-lose-all-my-disability-allowance/a1757962082.html>> accessed 01 December 2023.

<sup>182</sup> Disabled Persons Organisation (DPO) Coalition, 'Consultation Report November 2022: The views and lived experience of disabled people in Ireland in response to the UN Convention on the Rights of Persons with Disabilities' (2023) 34.

<sup>183</sup> Citizens Information 'Transport and Disability' (Citizens Information, 2023) <<https://www.citizensinformation.ie/en/travel-and-recreation/transport-and-disability/#:~:text=The%20scheme%20is%20closed%20to%20new%20applicants.&text=The%20mobility%20allowance%20is%20a,is%20closed%20to%20new%20applicants>> accessed 02 December 2023



## **Key barriers and recommendations for reform**

Social welfare payments need to be assessed in a different way. The level of success on appeal for disability-based payments shows that there is something wrong with how applications are dealt with in the first place.

- The process of applying for social welfare should be made more user-friendly for disabled people.
- There should be less focus on the medical model of disability and the person's diagnosis and more focus on the social barriers in qualifying for a disability social welfare payment.
- A disabled person's partner's means should not be included in means assessments. This will help ensure that disabled people can have financial independence from their partner.

New social welfare payments are needed for disabled people both inside and outside of employment.

- A cost of disability payment or top-up to disability allowance should be available to take into account the extra costs disabled people face.
- Disabled people must have access to any new pilot projects on universal basic income like the basic income for artists scheme (which in the past excluded people on disability allowance).
- More supports should be available for self-employed disabled people to allow them to provide for themselves without fear of losing access to supports they need.
- Old social welfare payments to support participation in the community like the mobility allowance must be opened up to new applicants or covered within a new payment option like a stand-alone cost of disability payment.

Government must not change disability payments based on how easy they think it is for disabled people to find work.

- Ireland must not follow the UK's example as it plans to do in the Green Paper with changes to disability benefits and payments.
- Government must listen to disabled people when they explain why these changes to social welfare would not work for them and to disabled people and disabled people's organisations when they come up with new systems or payments.

## Conclusion

This report set out to review Ireland's law and policy in light of the obligations under the UN Convention on the Rights of Persons with Disabilities in four key areas. While the four areas covered in the report were very different a number of recommendations or points were highlighted multiple times. Therefore, in order to address the recommendations made in this report and in general comply with its obligations under the UN Convention on the Rights of Persons with Disabilities Ireland must:

- Amend legislation or introduce new laws with clearly enforceable rights in line with the Convention. These laws must be enforced by the courts where necessary, and disabled people must have the right to support to exercise their rights, including with legal aid where needed to achieve this.
- Move beyond pilot programmes and strategies to the implementation of action plans and properly funded long-term programmes with clear targets and consequences if these are not achieved.
- Actively consult with disabled people and their representative organisations in the development of laws, policies, or programmes to implement the Convention.
- Collect data which will show how or if Ireland is meeting its obligations under the Convention and the goals it has set out in national action plans and strategies. This data should be disaggregated on the basis of disability and accessible to disabled people and their representative organisations.