



Disability Federation of Ireland's Submission to the
Department of Children, Equality, Disability, Integration
and Youth

On the Consultation on the Review of the Equality Acts

7th of December, 2021

Introduction

The Disability Federation of Ireland, DFI, welcomes the opportunity to contribute to this consultation on equality legislation in Ireland. We hope to continue to be part of the process of updating and improving equality legislation, and ensuring that the legislation serves the interests of all people facing discrimination in Ireland. DFI is an umbrella organisation with over 120 member organisation, representing disability organisation across Ireland. This submission is based on consultation with our members, as well as our own experiences and research.

Before moving on to the issues raised by legislation currently under review, we would like to raise a few general points about equality for people with disabilities:

- 27% of the homeless population have a disability, double the rate among the general population.
- 43% of people with disabilities reported depression in 2019, a rate three times higher than the national average of 14%
- The extra cost of disability has previously been estimated to be an average of €207 a week². That is an amount €4 more than the weekly Disability Allowance payment.
- Research conducted by IHREC and the ESRI has shown that, in public services, that people with disabilities were three times more likely to experience discrimination compared to those without disabilities.¹

Our key recommendations to improve equality legislation in Ireland are:

- Improve the definition of disability to reflect the social model of disability
- Raise the standard for reasonable accommodation in Ireland, in line with the UN CRPD
- Address the inequalities caused by the exemption for insurance in the Equal Status Act
- Improve the accessibility of the Workplace Relations Commission
- Add the tenth ground, socioeconomic status, to equality legislation
- Raise awareness of equality legislation and other measure among employers

While we welcome the review of the current legislation, particularly the Equal Status Act and the Employment Equality Act, it is very important to remember that people with disabilities rely on many policies and pieces of legislation to live equal lives.

Non commenced legislation

For instance, the Assisted Decision Making (Capacity) Act 2015, the Education for Persons with Special Educational Needs Act 2004, Disability Act 2005, and the Citizen's

¹ <https://www.ihrec.ie/app/uploads/2018/09/Disability-and-Discrimination.pdf>

Information Act 2007 all contain important provisions to support people with disabilities engage with society on an equal basis with others. Many critical elements of these acts have not been commenced, in some cases up to 15 or more years after the acts were passed. DFI hopes that as this consultation continues, the delays in these Acts will be addressed. Continuing to not commence elements of these Acts which would have a positive impact on equality for people with disabilities undermines the credibility and value of this well intended review.

Equality and services

In addition, DFI hopes that this equality review will consider that many people with disabilities need supports and services in order to be able to engage equally in many aspects of life, and to deliver on their rights under the UN CRPD. During our own consultation with our members to inform this submission, DFI heard of people with disabilities who were unable to take up jobs that had been offered to them, because they could not secure accessible housing in a location sufficiently near those jobs. Others were unable to access the supports, such as Personal Assistance (PA), they would need to take up employment. Any discussion of equality for people with disabilities must include and consider the services they rely on to live lives in the community, including engaging in employment and education, and living independently.

Issues

Definition of Disability

The current definition of disability found in both the Employment Equality Act and the Equal Status Act is:

- (a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
 - (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
 - (c) the malfunction, malformation or disfigurement of a part of a person's body,
 - (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or
 - (e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour,
- and shall be taken to include a disability which exists at present, or which previously existed but no longer exists, or

which may exist in the future or which is imputed to a person;

This definition is both medical and negative. It uses terms such as “malfunction”, “disfigurement” and “disturbed”. It embodies and perpetuates many of the stereotypes about disability - that it is an undesirable state, and that having a disability means that there is something wrong with a person. It is also very entrenched in the medical model. The medical model of disability focuses on the individual, on what is wrong with them, and how and whether they can be fixed. Ireland is in the process of moving on from this model, and this perception of people with disabilities, which we have seen in the ratification of the UN CRPD in 2018 and the recent decision to move disability services away from the Department of Health.

Instead, the definition of disability should use the social model. In this model, disability is seen as the result of the way society is structured, and the way that it creates obstacles for people with disabilities. Consider the definition of disability used in the UN Convention on the Rights of Persons with Disabilities, or UN CRPD:

“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

This definition explicitly acknowledges the fact that society creates barriers for people with disabilities. It also describes disability without the use of negative terms, or the implication that disability is a negative state. Using a definition along these lines would be a great improvement in Irish equality legislation. It would also be beneficial if Irish law used a single definition of disability. Currently, different pieces of legislation can define disability differently, creating confusion when someone has a disability under some legislation but not others.

With that said, there are two ways in which the current definition of disability is stronger than the definition found in the UN CRPD. First, the current definition addresses temporary disability. Second, the current definition addresses people who are perceived as having a disability, or may develop one in the future, and so face discrimination. When changing the existing definition of disability to reflect the UN CRPD’s definition, these two points should not be lost.

Reasonable Accommodation

Reasonable accommodation is an important support for people with disabilities. Reasonable accommodations account for a person’s disability and find ways to support that person to engage in mainstream education, employment and other aspects of life. Currently, in equality legislation in Ireland, there are two standards of reasonable accommodation: nominal cost and disproportionate burden. Nominal cost is the standard found in the Equal Status Act. It requires that those who provide a service to the public must provide reasonable accommodation to people with disabilities, and

failure to provide this accommodation will not be deemed reasonable “unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question.” On the other hand, the Employment Equality Act uses the disproportionate burden standard, which states that employers must provide reasonable accommodation to employees “unless the measures would impose a disproportionate burden on the employer.”

Disproportionate burden is the higher standard and is the standard found in the UN CRPD. Article 2 of the UN CRPD defines Reasonable Accommodation partially as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden”. This should be the standard used for reasonable accommodation across Ireland, for all services open to the public, including employment and education. The government sponsored Disability (Miscellaneous) Provisions Bill 2016 proposed an expansion of the bodies covered by the disproportionate burden standard. Early enactment of this Bill would be a significant advance. It would extend the disproportionate burden standard to bodies such as:

- Credit unions
- Financial institutions
- Insurance companies
- Communications companies
- Public Transport

DFI supports and has advocated for this expansion. believes that the disproportionate burden standard should be extended to *all* public service providers in Ireland.

Insurance

The Equal Status Act contains a number of exemptions, that allow certain bodies to discriminate in particular cases. In Ireland, a number of people with disabilities are affected by the fact that insurance companies are allowed to discriminate against people with disabilities, charging them higher premiums in some cases, and in other cases declining to offer coverage altogether. This insurance exemption prevents people with disabilities from living their lives and having opportunities and choices equal to others, as guaranteed by the UN CRPD. For example, it can prevent them from getting a mortgage to buy a house. The government needs to address this issue as not doing so perpetuates another barrier to equal participation.

DFI has heard from many people with disabilities who have lost chances at employment because of insurance problems. These individuals were offered jobs, but subsequently had the job offer rescinded when their potential employer realised that employing a person with a disability would raise the employers’ insurance premiums. In this case, the employer has broken the law by rescinding a job offer based on disability. However, the root cause of the problem is the insurance exemption, which led to higher

premiums. As employers learn that employees with disabilities can lead to higher insurance costs, they may be less likely to consider employing people with disabilities. This is particularly important in Ireland, where people with disabilities are disproportionately unlikely to be employed. The employment rate in Ireland for people with disabilities is the lowest in the EU, almost 20% lower than the EU average of 50.8%.² Ireland should take every measure to remove barriers to employment for people with disabilities.

DFI has also been informed of other problems people with disabilities have faced due to higher insurance costs. People have been unable to access life insurance due to their disability, and are therefore unable to get a mortgage. This issue can also create problems for car and travel insurance. Higher insurance costs therefore can prevent people with disabilities from accessing basic elements of life and community participation, such as securing a mortgage or owning a car, and engaging in activities such as travel, which can in turn make them dependent on sometimes inadequate state supports such as social housing and public transport. If the insurance exemption cannot be eliminated, it should be limited or modified to address these issues, for example by limiting the higher premiums that can be charged to people with disabilities, and eliminating the exemption in cases such as employment.

Accessibility of the WRC

The Workplace Relations Commission, WRC, is the main body that hears complaints about violations of equality law. For people with disabilities, there are many barriers to accessing the WRC and bringing a complaint about a rights violation. First, the procedures and paperwork needed to bring a complaint can be complicated, and there is limited support available for people with disabilities regarding correctly filing paperwork to bring their complaint. Legal aid is not available for complaints to the WRC, creating a significant economic barrier given that people with disabilities have amongst the highest poverty and deprivation rates in Ireland. Some people have had cases thrown out due to mistakes in their paperwork. Second, the forms required by the WRC can only be submitted online. This is a problem for people who do not have (and sometimes cannot afford) internet access or are not computer literate. The past few years have again highlighted the digital divide in Ireland, and this makes it harder for people with disabilities lacking in computer or digital skills to file a complaint. In addition, the forms are not compatible with screen reader technology, creating an additional barrier for people with visual impairments. Efforts to address the accessibility of the WRC are needed to allow people with disabilities to defend their rights, and receive compensation for violations. These measures could include access to legal aid and other forms of assistance.

Addition of the Tenth Ground and Intersectionality

² European Disability Forum (2020). Poverty and Social Exclusion of People with Disabilities: European Human Rights Report: Issue 4 – 2020.

DFI supports the proposal to add a tenth ground of unlawful discrimination, on socioeconomic grounds. People with disabilities are disproportionately likely to be affected by poverty, with poverty and deprivation rates three times higher than the general population. A striking 37.5% (CSO SILC) of people not at work due to illness or disability are at risk of poverty and social exclusion, over 18% live in consistent poverty, and 43% live in deprivation. A report on the dynamics of child poverty published by the ESRI earlier this year found that children with disabled parents are more likely to live in persistent poverty, and this is especially true where the parent cannot work due to their disability, particularly where the mother is disabled.³ The report also found that children living in poverty are twice as likely to have a chronic condition or disability. It concludes that families where the primary caregiver is disabled “are at a high risk of becoming trapped in poverty and this warrants additional policy intervention”⁴. The addition of this ground could thus benefit many people with disabilities.

In general, people with disabilities will benefit if the law takes a stronger intersectional approach. People with disabilities also experience discrimination based on gender, race, sexual orientation, ethnicity and all other grounds. This discrimination can interact in different ways with the person’s disability. A greater recognition of intersectionality, and of the harm caused by discrimination on multiple grounds, would be very useful in helping people with disabilities to assert and protect their rights.

Awareness of Legislation

DFI consulted our membership on the awareness levels regarding equality law among people with disabilities. Generally, our membership feels that there is better awareness of this area than in the past, and awareness has been increasing. However, many people with disabilities are still hesitant to bring an equality case, and as previously mentioned do not have sufficient financial resources and supports to take one. Even if they are successful, they worry that taking a case could harm them. For instance, potential future employers could hear that they have brought an equality case in the past, and therefore would be less likely to hire them.

The state could and should do more to assure anonymity for people who bring complaints, if they request it, but this fear is very difficult to counter. It can also be very

³ ESRI, *The dynamics of child poverty in Ireland: Evidence from the Growing Up in Ireland survey, 2021*, p42 <https://www.esri.ie/publications/the-dynamics-of-child-poverty-in-ireland-evidence-from-the-growing-up-in-ireland>. “The model allows us to differentiate between different types of non-employment and reveals that the mother’s inability to work due to illness or disability is the strongest predictor of both transient and persistent EV. While this is a small group (circa 1 per cent of families in wave 1), their very high risk of poverty is of policy concern”.

⁴ ESRI, *The dynamics of child poverty in Ireland: Evidence from the Growing Up in Ireland survey, 2021*, p42 <https://www.esri.ie/publications/the-dynamics-of-child-poverty-in-ireland-evidence-from-the-growing-up-in-ireland>. “The model allows us to differentiate between different types of non-employment and reveals that the mother’s inability to work due to illness or disability is the strongest predictor of both transient and persistent EV. While this is a small group (circa 1 per cent of families in wave 1), their very high risk of poverty is of policy concern”.

difficult for people with disabilities to prove that they have been discriminated against. When looking for jobs, people with disabilities often find they are ruled out of the process early, and given various reasons why they aren't suitable for a position. It is difficult to know, and harder to prove, that an employer has a bias against hiring a person with a disability. While no one is required to disclose a disability, more than one DFI member had experience of employers who felt that a failure to disclose early in the recruitment process was deceitful, or a breach of trust. Education for employers in equality legislation, and the supports available for employers of people with disabilities, could be very useful. Many employers are unaware that there are funds available to help them provide reasonable accommodation, for instance, which is very unfortunate.

Conclusion

This review of equality legislation in Ireland is both welcome and timely. While Ireland once had some of the most progressive equality legislation in Europe, ideas about equality and equity have moved on significantly in the past decades, and Ireland's equality framework and legislation must reflect this. The outdated nature of Ireland's current legislation can be seen in the core definition of disability used, a definition rooted in the old medical model of disability which Ireland has been working to move away from. DFI hopes that this consultation will allow the government to update equality legislation in Ireland, to better protect and support all people facing discrimination in Ireland. In particular we see this review as an opportunity to bring the language and framework of the UN CRPD into our national equality framework. In turn this can ensure that our equality legislation fully addresses common areas of discrimination experienced by people with disabilities, and common barriers to equality, ensuring that all services are....

We would like to see all non-commenced acts commenced, and the early enactment of the Disability (Miscellaneous Provisions) Bill 2016. We would like the issues around the definition of disability, reasonable accommodation, and insurance to be addressed. We would also like to see a serious consideration of the connection between adequate services and equality for people with disabilities.



DFI is about making Ireland fairer for people with disabilities.

We work to create an Ireland where everyone can thrive, where everyone is equally valued.

We do this by supporting people with disabilities and strengthening the disability movement.

There are over 120 member organisations in DFI. We also work with a growing number of other organisations that have a significant interest in people with disabilities.

DFI provides:

- Information
- Training and Support
- Networking
- Advocacy and Representation
- Research, Policy Development and Implementation
- Organisation and Management Development

Disability is a societal issue and DFI works with Government, and across all the social and economic strands and interests of society.

DFI, Fumbally Court, Fumbally Lane, Dublin 8

Tel: 01-4547978, Fax: 01-4547981

Email: info@disability-federation.ie

Web: www.disability-federation.ie

Disability Federation of Ireland is a company limited by guarantee not having share capital, registered in Dublin.

Registered No 140948, CHY No 6177, CRA No 20010584

