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**An Bille um Míchumas (Forálacha Ilghnéitheacha), 2016**  
**Disability (Miscellaneous Provisions) Bill 2016**

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*Meabhrán Mínteach*  
*Explanatory Memorandum*

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**AN BILLE UM MÍCHUMAS (FORÁLACHA  
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DISABILITY (MISCELLANEOUS PROVISIONS) BILL 2016**

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**EXPLANATORY MEMORANDUM**

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The primary purpose of the Bill is to address the remaining legislative barriers to Ireland's ratification of the UN Convention on the Rights of Persons with Disabilities (UN CRPD). Ireland signed the Convention in 2007 and, since then, successive Governments have emphasised Ireland's commitment to proceed to ratification as quickly as possible, taking into account the need to ensure all necessary legislative requirements under the Convention are met.

The Bill addresses a range of legislative barriers to ratification which are not addressed separately in other legislation (mainly in the Assisted Decision-Making (Capacity) Act 2015). The opportunity is also being taken to progress a number of other miscellaneous amendments to equality and disability legislation.

**Financial implications**

No direct financial implications arise.

**Main provisions**

**Section 1:** provides for amendment of the Juries Act 1976 so that a person who is deaf shall not be ineligible for jury service by reason only of his or her requiring the services of a sign language interpreter. The existing prohibition on a person who has a mental illness or disability, and is receiving medical treatment or is resident in a hospital or similar institution, from serving as a juror is replaced with a functional capacity test which will provide that a person must have the mental and intellectual capacity to serve as a juror.

**Section 2:** amends the Electoral Act 1992 to repeal the prohibition on a person of 'unsound mind' from standing for election to the Dáil (and thereby removing the disqualifications for membership of the Seanad and for election to the European Parliament also).

**Section 3:** makes provision for the role of the National Disability Authority (NDA) as part of the monitoring mechanism for the Convention and provides that staff of the Authority become civil servants of the State.

The NDA is the only body within the Justice Vote whose staff are not civil servants. Aside from the impact this anomaly has on the management of human resources within the Justice Vote, that the NDA's staff are public servants means that the Board must meet pension liabilities as they arise from its annual allocation. This is a serious burden for a small body with a relatively small financial allocation. Civil servant of the state status will

mean that pension liabilities are met from the Vote for Superannuation and this was the approach adopted in relation to the Irish Human Rights and Equality Commission when it was established in November 2014. The change has no impact on the independence of the Authority in the discharge of its functions.

**Section 4:** The UN CRPD provides that reasonable accommodation (i.e. practical help to ensure that the person with a disability can, for example, access a service) be provided for people with disabilities in the areas of employment and provision of services, provided the cost does not exceed a disproportionate cost. The Supreme Court decided in the Article 26 referral of the Employment Equality Bill 1996 that it would be unconstitutional to impose such a requirement where the cost exceeds a nominal cost. The Supreme Court decision hinges on the private property protection provisions of the Constitution. Clearly, these do not arise in relation to provision of public services. The *not exceeding a disproportionate burden standard* is also permissible in the case of commercial bodies whose activities are regulated for quality of service, viz. banks, insurance companies, telecommunications and transport providers, and credit unions. The provision of the *not exceeding a disproportionate burden standard* in the case of the remaining private sector providers does face a constitutional impediment, but can be considered in the light of developments in relation to EU anti-discrimination legislation and will need to be subject in the interim to a reservation.

**Section 5:** brings civilian staff of the Garda Síochána back within the terms of Part 5 of the Disability Act (providing for a 3% public sector employment quota for people with disabilities). This group of civil service staff was inadvertently removed from the scope of Part 5 by the enactment of the Garda Síochána Act 2005.

**Section 6:** provides for the Irish Human Rights and Equality Commission to act as *amicus curiae* before the Court of Appeal, as well as before the High and Supreme Courts as already provided for. It was not possible – for technical, timing reasons – to include a reference to the Court of Appeal in the Irish Human Rights and Equality Commission Act 2014, or to insert a cross-reference in the Court of Appeal Act 2014, and the opportunity is being taken to resolve the anomaly now.

IHREC will be a key component of Ireland’s national monitoring framework for the Convention and this section creates a statutory basis for IHREC’s role in the monitoring framework in relation to UN CRPD.

*Section 7:* Provides for citation and commencement.

#### **Other issues to be progressed as Committee Stage amendments**

As indicated in the **Roadmap for Ratification** published in October 2016, the following matters will also be addressed in the Bill. Work has not yet been completed on drafting the relevant sections, which will be introduced as Committee Stage amendments during the enactment process.

The Head No. refers to the number of the Head in the General Scheme of the Bill as published.

**Head 3:** Legislative clarity is needed, in relation to residential care facilities, on who has statutory responsibility for a decision that a patient should not leave for health and safety reasons, and what appeals process should be in place. The absence of a statutory provision in relation to deprivation of liberty issues in such cases, means that Ireland cannot comply with the UN CRPD standard that any deprivation of liberty be in conformity with the law. The key point is that there is no statutory law.

The Department of Health is working on proposals to address this issue.

**Head 6:** will amend section 4 of the Criminal Law (Insanity) Act 2006 to provide that in the circumstances that existed in *G. v District Judge Murphy*, the District Court will have jurisdiction to determine whether the accused person is fit to be tried.

**Head 7:** will provide for the replacement of a number of references in statute to ‘lunatics’ or ‘persons of unsound mind’ insofar as those amendments are required prior to ratification

**Head 10:** will amend the Equal Status Acts 2000 - 2015. Following the enactment of the Gender Recognition Act 2015, it is desirable to make explicit the prohibition of discrimination against transgender persons under equality legislation to reflect the significance of the establishment of a system of legal recognition of the acquired gender of transgender persons and of intersex persons.

**Head 11** will amend the Employment Equality Acts 1998 -2015. Follows Head 10 in making a corresponding amendment to the Employment Equality Acts.

**Head 12:** will amend the Employment Equality Acts to encompass prospective employees, employers, vocational training bodies, professional bodies and trade unions in the definition of victimisation. At present, the text of the definition of victimisation refers only to an employer/employee relationship. This is out of line with EU legislation and the jurisprudence of the European Court of Justice. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is broader in its definition of victimisation, setting out that member states must introduce measures to protect individuals from adverse treatment or adverse consequences in relation to a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment. This requires that potential employees (as well as employees, as at present), and potential employers, vocational training bodies, professional bodies and trade unions (as well as employers, as at present) be covered in our domestic definition of victimisation.

**Head 13:** will amend the Taxes Consolidation Act 1997 to include the Assisted Decision-Making (Capacity) Act 2015 categories of decision-making representatives and attorneys as persons authorised to handle tax matters on behalf of incapacitated people.

**New provision:** will amend the Social Welfare Consolidation Act 2005. This is a new Head which was not included in the General Scheme as published.

The existing legislative provisions in the Social Welfare Consolidation Act 2005 empowers the Minister for Social Protection to make regulations to appoint a person to act on behalf of a recipient or beneficiary of social welfare payments in circumstances where the recipient/beneficiary is certified by a registered medical practitioner to be a person who is, or is likely soon to become, unable for the time being to manage his or her own financial affairs.

The Assisted Decision-Making (Capacity) Act 2015 sets out guiding principles that are intended to safeguard the autonomy and dignity of the person with impaired capacity. In order that the social protection arena takes full account of those principles, it is necessary to explicitly reference the Assisted Decision-Making (Capacity) Act 2015 in Section 244 (Payment to persons other than claimant or beneficiary) of the Social Welfare Consolidation Act 2005.

*An Roinn Dlí agus Cirt agus Comhionannais  
Nollaig, 2016.*

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