**The Office of the UN High Commissioner for Human Rights request for information pursuant to Human Rights Council resolution 25/20 concerning the right to education of persons with disabilities**

Response of Ireland

*18/08/2014*

**Note:** The OHCHR’s request for information concerns the rights of persons with disabilities under article 19 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) to live independently and be included in society. Ireland has signed (30 March 2007) but not ratified the UNCRPD and the answers to these questions must be considered in this context.

***Questions***

1. ***Does the constitution or national or local legislation, including civil and criminal law, of your country include provisions to avoid institutionalization and promote deinstitutionalization through, for example:***
2. ***Prohibiting forced institutionalization or deprivation of liberty on the basis of disability or diagnosis, condition or impairment;***
3. ***Banning presumption of dangerous to self or others on the basis of disability or, on the other hand, diagnosis, condition or impairment;***
4. ***Ensuring an array of options under social protection schemes to choose where to live, and thus avoiding institutionalization in homes, care centres or other segregated settings;***
5. ***Ensuring the right to choose whom to live with, avoiding then forced institutionalization or any other form of forced living arrangement;***
6. ***Considering access to and availability of resources for supported decision-making processes for adults, providing the person concerned the opportunity to choose the kind of support desired; and***
7. ***Providing for accessibility, both physical and in communication and transportation, to make all services for the general population also available for persons with disabilities, on an equal basis with others.***

**Responses to Questions 1(a), (b), and (d):**

The Programme for Government committed to putting National Standards for Residential Services for People with Disabilities on a statutory footing, to ensure that the services could be inspected by the Health Information and Quality Authority (HIQA). This commitment was fulfilled when two regulations, one relating to care and support and the second relating to registration issues, were approved and signed by the Minister for Health, with the scheme commencing on 1 November 2013.

The purpose of the regulations is to safeguard and support the delivery of person-centred care to vulnerable people of any age who are receiving residential care services and ensure that their health, well-being and quality of life is promoted and protected. Over time this will empower providers to deliver even higher quality standards. Compliance with the HIQA standards is a requirement under the Service Level Arrangements (SLA) between the Health Service Executive (HSE) and voluntary service providers in the disability sector.

The introduction of registration and inspection represents a significant advance in terms of delivering consistent and high quality services for people with disabilities in residential services. There are a number of standards which relate indirectly to protecting a person’s liberty and reinforcing it. The underlying assumption is that people with a disability are not detained against their will. The HIQA standards are about protection of a person’s rights and preventing them being abused. The following standards are relevant in this regard.

Theme 1: Individualised Supports and Care

People living in residential services are actively involved in determining the services they receive and are empowered to exercise their rights including the right to be treated equally in the allocation of services and supports, the right to refuse a service and to exit a service in favour of another one in order to live independently. People make their own choices, participate in running of the services and contribute to the life of the community, in accordance with their wishes.

Theme 2: Effective Services

People have the right to choose where they want to live, with whom they wish to live with and the place they wish to call home. Access arrangements for residential services uphold the rights of people and do not discriminate on admission or discharge.

Theme 3: Safe Services

People make decisions about their own lives, support services and care in the residential service and they feel safe and secure while living there. Safe residential services are open, transparent and accountable. Policies and procedures are in place in residential centres that outline the supports for individuals with behaviours that challenge or individuals who are at risk from their own behaviour. Safeguards have to be in place in the event of any restrictive practices being invoked in a service.

**Response to Question 1(e):**

Comprehensive reform of the legislation relating to capacity and to decision-making by persons who have difficulty in making decisions unaided is in progress. The Assisted Decision-Making (Capacity) Bill is a far-reaching Bill which provides for a system that offers a continuum of options to support people in maximising their decision-making capability. The Assisted Decision-Making (Capacity) Bill sets out guiding principles that are intended to safeguard the autonomy and dignity of the person with impaired capacity. They apply to each and every intervention, including by courts, that is made under the proposed legislation. These guiding principles are:

* There is a presumption of decision-making capacity unless the contrary is shown.
* No intervention will take place unless it is necessary.
* A person will be treated as unable to make a decision only where all practicable steps to help that person to make a decision have been unsuccessful.
* Any act done or decision made under the Bill must be done or made in a way which is least restrictive of a person’s rights and freedoms.
* Any act done or decision made under the Bill in support or on behalf of a person with impaired capacity must give effect to the person’s will and preferences.

The Bill proposes three types of decision-making support options to respond to the range of support needs that people may have in relation to decision-making capacity: assisted decision-making, co-decision making and a decision making representative. An Office of Public Guardian (OPG) will be set up within the Courts Service to manage capacity-related matters for adults. The OPG will supervise and handle complaints against decision-making assistants as well as against the co-decision makers, decision-making representatives and attorneys of enduring powers appointed by the court. It will also prepare codes of practice for specific groups and will promote awareness of the legislation among the general public.

The Bill’s publication in July 2013 was followed in September by a consultation symposium organised by the Department of Justice and Equality, by the Dáil Second Stage debate in December 2013 (the Dáil is the lower house of Ireland’s legislature; the Oireachtas), and by a second consultation process undertaken by the Joint Oireachtas Committee on Justice, Defence and Equality, in Spring 2014. All of these processes identified areas of the Bill which required amendment to ensure a better fit with the requirements of the UNCRPD and the European Convention on Human Rights. Amending provisions are being drafted by the Department of Justice and Equality in tandem with the Office of Parliamentary Counsel. The aim is to enact the legislation this year.

**Response to Question 1(f):**

The Government launched the National Disability Strategy in September 2004 to build on the existing strong legislation and infrastructural framework for equality. The Strategy gives statutory effect to the policy of mainstreaming public service provision for people with disabilities within the State agencies that provide the service to citizens generally. The key elements of the strategy are:

* the Disability Act 2005;
* Sectoral Plans prepared by six Government Departments (Department of Health; Department of Social Protection; Department of Transport, Tourism and Sport; Department of Communications, Energy and Natural Resources; Department of the Environment, Community and Local Government; and the Department of Jobs, Enterprise and Innovation) that set out how each Department delivers specific services for people with disabilities;
* the Citizens Information Act 2007;
* the Education for Persons with Special Educational Needs Act 2004;
* a multi-annual investment programme (2006-2009) targeted at high-priority disability support services.

The Disability Act 2005 is part of a framework of Government legislative measures which support social inclusion. It is a positive action measure designed to advance and underpin the participation of people with disabilities in society by supporting the provision of disability specific services and improving access to mainstream public services. It places significant obligations on public bodies to make buildings and services accessible to people with disabilities, provides for Sectoral Plans in key service areas, requires public bodies to take positive actions to employ people with disabilities and provided for the establishment, in 2007, of the Centre for Excellence in Universal Design.

Established by the National Disability Authority Act 1999, under the aegis of the Department of Justice & Equality, the National Disability Authority is an independent state body providing expert advice on disability policy and practice to the Minister. The work of the Authority guides on policies, practice and technical standards that address the challenges to full inclusion of people with disabilities in Irish society. The Centre for Excellence in Universal Design, established by the Disability Act 2005 and an integral part of the Authority, is dedicated to the principal of universal access, enabling people in Ireland to participate in a society that takes account of human difference and to interact with the environment to the best of their ability. The Centre contributes to the development and promotion of standards in universal design; develops and supports the inclusion of universal design principals in education and professional development; promotes public awareness of the difficulties experienced by people in relation to the environment; and promotes an understanding of Universal Design.

***Questions***

1. ***Does your country have a plan or program that provides for, inter alia, the following services to support community living for persons with disabilities:***
2. ***Personal assistance; and***
3. ***In home and other community-based services.***
4. ***If so, please respond to the following questions:***
5. ***Are the services paid for by a State entity (central/federal)?***
6. ***Are the service-providers chosen directly by persons with disabilities or is the choice made by other entities including companies, social security agencies, the government, medical insurance agencies, guardians or other third party?***
7. ***Are persons with disabilities entitled to refuse the support offered and choose an alternative support?***
8. ***Can family members be service providers?***
9. ***Are there public and private service providers to choose from?***
10. ***Does the provision of services cover the entire country in urban and rural areas with equal quality services?***
11. ***Are these services available to all persons with disabilities, regardless of their impairment (please use article 1(2) of the Convention on the Rights of Persons with Disabilities as reference for ‘persons with disabilities’)?***
12. ***Please, specify what Ministry is in charge of implementing these policies on provision of services.***

**Responses to Questions 2 and 3:**

Ireland’s Health Service Executive (HSE) provides arange of assisted living services, including Personal Assistant (PA) services, to support individuals to maximise their capacity to live full and independent lives. While the resources for the provision of assisted living services available are substantial, they are finite.

The role of a PA is to assist a person with a disability to maximise their independence through supporting them to live in integrated settings and to access community facilities. The PA works on a one to one basis, in the home and /or in the community, with a person with a physical or sensory disability. A vital element of this personalised support is the full involvement of the individual (service user) in planning and agreeing the type and the times when support is provided to them, supporting independent living must enhance the person’s control over their own life.

Services are accessed through an application process or through referrals from public health nurses or other community based staff. Individuals’ needs are evaluated against the criteria for prioritisation for the particular service and then decisions are made in relation to the allocation of resources. Resource allocation is determined by the needs of the individual, compliance with prioritisation criteria, and the level of resources available.

In the normal course of service delivery, there will be ongoing reviews throughout the year to ensure that if needs change, the service provided will address this change within available resources. An individual’s PA hours may be adjusted following a service review where service demand can result in one individual’s service being reduced in order to address priority needs of other people with disabilities within that community.

3.7 million hours of Personal Assistant / Home Support Hours will be provided through the HSE National Service Plan for 2014.

***Question***

1. ***Does your country have an independent accountability mechanism in place to monitor the implementation of deinstitutionalization policies, to avoid abuse in current segregated settings and to ensure access to justice, if needed***?

**Response to Question 4:**

See answer to question 1, the HIQA standards are about protection of a person’s rights and preventing them being abused in disability residential centres. There is no independent mechanism monitoring the implementation of deinstitutionalization policies. However, progress on deinstitutionalization is tracked through the monitoring of the HSE’s Operational Plan.