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The UN Convention on the Rights of Persons with Disabilities and Northern Ireland

1 Introduction

This paper discusses the UN Convention on the Rights of Persons with Disabilities (UNCRPD). It also discusses how the Convention has been implemented in Northern Ireland. This paper has been requested by the Committee of Employment and Learning as part of its inquiry into post Special Educational Need provision in education, employment and training for those with Learning Disabilities (LD).

2 The UNCRPD and Northern Ireland

The UNCRPD was adopted in December 2006 and was developed to:¹

¹ United Nations, Convention on the Rights of Persons with Disabilities,
<http://www.un.org/disabilities/convention/conventionfull.shtml>

...promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity

As defined by the Convention, people with disabilities include those who have:²

- Long-term physical impairments;
- Mental impairments;
- Intellectual impairments; and
- Sensory impairments.

The Convention has eight principles under which it operates:

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Equality between men and women; and
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Countries that sign up to the Convention are expected to adhere to a number of obligations that fall under broad titles (approximately 35 Articles), which include:

- Equality and non-discrimination;
- Women with disabilities;
- Children and disabilities;
- Accessibility;
- Equal recognition before the law;
- Education; and
- Work and employment.

2.1 Specific Articles of Note

There are nine General Obligations signatories are expected to undertake and adhere to. These include:³

² Ibid

³ Ibid

- To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise; and
- To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.

Article 24 concerns the obligations for promoting access to education. It promotes an inclusive education system with access for people with disabilities at all levels, including lifelong learning programmes.

As with other aspects of the Convention, signatory states are expected to undertake activities which enable people with disabilities to fully partake in education. In the case of education, States must ensure that:

- Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- Reasonable accommodation of the individual's requirements is provided;
- Persons with disabilities receive the support required, within the general education system, to facilitate their effective education; and
- Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

The Convention also comments that States Parties should take measures to employ teachers who are appropriately trained to work people with disabilities, including qualifications in sign language, training in disability awareness and the use of augmentative technologies.

Added to this:⁴

States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.

⁴ Ibid

A consequence of this is a States need to ensure reasonable accommodation is provided to a person with disabilities.

The Convention defines “reasonable accommodation” as:

...necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Article 27 of the Convention encompasses work and employment. It identifies eleven actions, including:

- Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment; and
- Employ persons with disabilities in the public sector.

The Article states that these actions should be promoted and safeguarded via taking the appropriate steps, including through legislation.

2.2 Governance and Monitoring of the Convention

In order to ensure the appropriate application of the Convention, the UN established a Committee on the Rights of Persons with Disabilities (the Committee).

This Committee is made up of a panel of experts nominated, and elected by States Parties. Initially, the Committee will be made up of twelve members, expanding to eighteen after sixty ratifications or accessions are made to the Convention.

The Committee receives reports by States Parties every four years (although the first report must be submitted two years after the Convention is ratified in a State). The Report is on the measures taken by the State to give effect to its obligations under the Convention.

In addition to the reports provided by Government, the Committee also receives reports filed by independent bodies from within the country which will be tasked with promoting, protecting and monitoring the implementation of the Convention. For

example, in Northern Ireland this function is carried out by the Equality Commission and the Northern Ireland Human Rights Commission.⁵

The Committee will subsequently report to the General Assembly and to the Economic and Social Council every two years on its activities. It may also make recommendations based on the reports the Committee received from States parties.

3 Implementation of the Convention in Northern Ireland

The UNCRPD was ratified and entered into force in the UK in 2009.⁶ The Articles as discussed above were also introduced to Northern Ireland at the same time, with the Equality Commission (ECNI) and the Northern Ireland Human Rights Commission (NIHRC) taking on the role of the independence mechanism.

The ECNI carried out research into the implementation of the UNCRPD in NI, published in January 2012. Carried out by Disability Action, the report identified key strategic issues and barriers to the Conventions full implementation.⁷

The research identified three key areas in which action was needed in order to ensure the effective implementation. These areas where:

- **Article 8 - Awareness Raising:** Focus groups identified that individuals and organisational attitudes to people with disabilities needed to be changed, with education and the increased participation of people with disabilities needed to institute this change.
- **Article 29 - Participation in Political and Public Life:** The ECNI research found that disabled people were: “*Not being asked in a comprehensive way, their opinions on policies and programmes that affect them as citizens in Northern Ireland.*”;
- **Articles 9, 21 and 31 - Statistics and Data Collection and Access to Information:** As stated in the ECNI report:

The availability of robust data, information and statistics to the State, the independent monitoring body, society and crucially disabled people and their representatives is central to evidence-based policy making and to an effective monitoring process under Article 33 UNCRPD. However currently these statistics rarely provide the range of information required by the UNCRPD and/or are not generally accessible to disabled people and their representatives.

The report concludes by stating that it is:

⁵ Equality Commission for Northern Ireland, What is UNCRPD? <http://www.equalityni.org/Delivering-Equality/Addressing-inequality/UNCRPD-Disability/Policy-responses/What-is-UNCRPD>

⁶ Ibid

⁷ Equality Commission for Northern Ireland, Disability Action, January 2012, Disability programmes and policies: How does Northern Ireland measure up?, <http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/UNCRPDmonitoringimplementationFullReport0112.pdf?ext=.pdf>

...abundantly clear just how limited the research base actually is in relation to disabled people / disability in Northern Ireland. There is a need for much more research in this area to ensure the full implementation of the Convention.

In July 2014, the ECN, in conjuncture with the Human Rights Commission in their role as the ‘Independent Mechanism’ for monitoring the UNCRPD, produced an update to the implementation report. It identified nine areas of substantive shortfall in NI’s implementation of the Convention.⁸

The nine areas of shortfall are:

- **Article 5: Equality and non-discrimination;**
- **Article 8: Awareness-raising;**
- **Article 12: Equal recognition before the law;**
- **Article 19: Living independently**
- **Article 24: Education;**
- **Article 25: Health;**
- **Article 28: Adequate standard of living and social protection;**
- **Article 29: Participation in public and Political Life; and**
- **Articles 9, 21 and 31: Access to Information and Statistics and Data Collection.**

Of most note to the Committee’s Inquiry is education. The study found the following:

- Concerns that existing policy proposals regarding SEN will dilute existing entitlements for children and young people with disabilities and lead to inconsistencies between children and young people with disabilities depending on whether they are educated in special school or mainstream schools, and whether they receive a CSP or a Person Learning Plan ; and
- Concern at the quality of educational experiences received by children with disabilities in Northern Ireland. In particular, there are concerns at the lack of resourcing, planning, training, participation and support; and
- Research has suggested that the process of transition from school to further education, training or employment and from child to adult health and social care services is often inadequate.

The report made the following recommendations in order to tackle the shortfall:⁹

- Collect, monitor and review information (including on attainment levels) regarding pupils and students with a disability in Northern Ireland;

⁸ Equality Commission Northern Ireland, July 2014, UNCRPD Jurisdictional ‘parallel’ report on implementation in Northern Ireland, http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/IMNI_CRPD_ParallelJurisdictionalReport_WorkingPaper_v1_080714.pdf

⁹ Ibid

- Put in place consistent procedures/protocols for assessing need and differential thresholds for intervention in relation to the assessment and diagnosis of SEN in Northern Ireland;
- Ensure the quality of educational experiences received by children with disabilities in Northern Ireland with regard to resourcing, planning, training, participation and support;
- Secure equality of opportunity for pupils and students with disabilities in Northern Ireland, including the immediate realisation of reasonable accommodation; and
- Set targets to increase participation and completion rates by students with disabilities in all levels of education and training in Northern Ireland, including tertiary level education.