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Michael Potter

The United Nations Convention on the Rights of Persons with Disabilities

1 Introduction

This paper is written in the context of the introduction in the Northern Ireland Assembly of the Mental Capacity Bill. The paper summarises the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and its applicability in Northern Ireland.

2 Summary of the UNCRPD

What is the UNCRPD?

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)¹ was adopted by the United Nations in December 2006 and came into force in May 2008.

The Convention sets out a set of international standards for the protection of the rights of people with disabilities.

What is the Status of the Convention in Northern Ireland?

The UK signed the Convention in 2007 and ratified it in 2009². There are two approaches to international human rights standards in domestic law³:

- Monist – upon ratification, international law becomes national law
- Dualist – national and international law are separate

The UK takes a dualist approach, so unless international standards are transposed into domestic legislation, they are not directly justiciable⁴.

The UK Government regards the Convention as ‘soft law’, i.e. the standards are to be upheld in the UK but are not directly applicable in UK law. However, the Joint Committee on Human Rights has stated that the Convention should be regarded as ‘hard law’⁵.

Northern Ireland has an obligation to uphold the international obligations of the UK in the areas that are devolved⁶.

The Republic of Ireland has signed but not ratified the Convention.

¹ Convention on the Rights of Persons with Disabilities:

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>.

² Convention and Optional Protocol Signatures and Ratifications, UN Enable website, accessed 14 May 2015:

<http://www.un.org/disabilities/countries.asp?id=166>.

³ Lammy Betten and Nicholas Grief (1998), *EU Law and Human Rights*, London: Longman, p.12

⁴ For an general overview of the application of international human rights standards in Northern Ireland, see Research and Information Service Research Paper 75/11 *Equality and Human Rights Legislation in Northern Ireland: A Review*, August 2011, pp.18-30: <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2011/ofmdfm/7511.pdf>.

⁵ House of Lords House of Commons Joint Committee on Human Rights (2012) *Implementation of the Right of Disabled People to Independent Living*, London: Stationery Office, p.61:

<http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/257/257.pdf>.

⁶ Northern Ireland Act Sections 14(5)(a) and 26; Devolution: Memorandum of Understanding and Supplementary Agreements (2010), Paragraph 21:

http://www.ofmdfmni.gov.uk/memorandum_of_understanding_and_concordate_on_co-ordination_of_eu_issues_-_march_2010.pdf; See also Research and Information Service Briefing Paper 20/14 Human Rights and Equality Proofing of Public Bills, 10 February 2014: http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2014/assembly_exec_review/2014.pdf.

How is the UNCRPD Monitored?

The Committee on the Rights of Persons with Disabilities (CRPD)⁷ is the body of independent experts which monitors implementation by countries which have ratified the Convention. The UK has not yet been examined by the Committee and at the time of writing no date had been set for it to do so.

An independent mechanism exists in the UK for monitoring the implementation of the Convention. In Northern Ireland, the independent mechanism is shared between the Equality Commission⁸ and the Human Rights Commission⁹.

An Optional Protocol¹⁰, which the UK has signed and ratified, provides for complaints from individuals and organisations to be considered by the Committee.

What has the UNCRPD got to do with Mental Capacity?

The UNCRPD reflects a move away from a 'medical model', which concentrates on the limitations of the individual, to a 'social model', which identifies barriers created in society. This is stated in the Preamble to the Convention:

Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

Article 3 of the Convention sets out general principles, the first of which is:

Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons.

The freedom to make choices requires a framework by which people with mental capacity issues are assisted to do so.

Other specific articles refer to rights which have relevance for the mental capacity of individuals. For example, Article 12, *equal recognition before the law*, requires measures to be put in place to allow individuals to exercise legal capacity, while being protected from abuse. Again, this necessitates support structures to be in place to assist individuals to make legal decisions about themselves where they have the capacity to do so.

⁷ Committee on the Rights of Persons with Disabilities: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>.

⁸ UNCRPD, Equality Commission for Northern Ireland, accessed 15 May 2015: <http://www.equalityni.org/uncrpd>.

⁹ About the United Nations Convention on the Rights of Persons with Disabilities, Northern Ireland Human Rights Commission, accessed 15 May 2015: <http://www.nihrc.org/advice-for-you/uncrpd>.

¹⁰ Optional Protocol to the Convention on the Rights of Persons with Disabilities: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx>.