

**National Disability Authority Policy Advice Paper**

**Dept of Housing, Planning and Local Government's  
Public Consultation on the Modernisation of the  
Electoral Registration Process -**

## National Disability Authority

The National Disability Authority (NDA) is an independent statutory body with a statutory duty to provide evidence informed advice and information to Government and officials in the public sector on disability matters; to assist in the co-ordination of disability policy and to promote awareness and adoption of universal design to benefit the wider population.

We work through our [Centre for Excellence in Universal Design](#) to promote universal design of the built environment, products, services and information and communication technologies so that they can be easily accessed and used by everyone, regardless of age, size, ability or disability.

The vision of the NDA is a society in Ireland in which persons with disabilities **can realise their civil and political rights**; have opportunities to participate in economic, social and cultural life; have choice and control over how they live their lives; and reach their individual potential in a society and environment that embraces, accommodates and values the full range of human ability and diversity.

The NDA welcomes the consideration the Department of Housing, Planning and Local Government is giving to reform the electoral register and sets out below the policies and resources that could inform and underpin a new electoral register that is accessible to all. In this way, a new electoral register could become an example of an inclusive public service that supports the rights of persons with disabilities to participate in civic and political life.

In making the comments below the NDA is fully supportive of the need to maintain the security, integrity and accuracy of the electoral register and public trust in it.

## NDA Advice

The consultation document references “a clear and simple process” to being included on the electoral register; the NDA supports this and suggests that based on the advice and guidance set out below that this can be achieved in order to make the registration process accessible to all.

### **Key Proposal No 1: Simplification of forms and process**

The NDA welcomes the fact that consideration will be given to streamlining the “forms for postal votes or special voting arrangements”. We also welcome the fact that the Department will work with NALA to check for Plain English and

accessibility of the forms. We would also ask the Department to work with the NDA as well if this proposal is part of the reform process.

The NDA's Centre for Excellence in Universal Design (CEUD) has a range of advice and guidance on IT accessibility<sup>1</sup>. The NDA also has guidance on procurement and accessibility<sup>2</sup>.

The CEUD has also worked closely with the Department of Public Expenditure and Reform to produce **Customer Communications Toolkit for the Public Service - A Universal Design Approach**<sup>3</sup>. It is intended that this toolkit be used in the public service for the design of Written, Verbal and Digital Communication. The toolkit sections contain selected statements, examples, tips, checklists and links to learn more.

At the launch of the Toolkit the Minister for Public Expenditure and Reform stated:

“ . . . customer engagement will be a key focus of the new Public Service Development and Innovation Framework, currently being developed in my Department. This toolkit will be a major element of our drive to increase accessibility of public services”<sup>4</sup>.

### **Key proposal No. 2: A rolling register or continuous registration**

Persons with disabilities have consistently expressed frustration with the very tight deadlines that have to be met when applying for a postal vote. If persons who require a postal vote can apply for one online and within a realistic timeframe, then this proposal is very welcome. We recognise that this may require a change in legislation.

### **Key proposal No. 3: Optional online Registration and secure self service**

Online services, set-up with accessible features from the start, allow persons with disabilities to do their business using the smart/assistive technologies available to them. Not all persons with disabilities have the capacity to use these

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<sup>1</sup> <http://universaldesign.ie/Technology-ICT/>

<sup>2</sup> <http://nda.ie/Good-practice/Guidelines/Procurement-and-Accessibility/>

<sup>3</sup> <http://universaldesign.ie/Products-Services/Customer-Communications-Toolkit-for-the-Public-Service-A-Universal-Design-Approach/>

<sup>4</sup> <https://www.per.gov.ie/en/customer-communications-toolkit/>

technologies, or may prefer a paper option. The NDA also advises that any websites or mobile apps used to deliver this service and related information will come under the scope of the **EU Web Accessibility Directive**<sup>5</sup>, and will therefore need to comply with the relevant clauses of the European standard, EN 301 549: **Accessibility Requirements for ICT Products and Services**<sup>6</sup>.

This is equivalent to meeting all level AA success criteria in the Web Content Accessibility Guidelines (WCAG 2.1)<sup>7</sup>. WCAG 2.1 covers a wide range of recommendations for making Web content more accessible. Following these guidelines will make content more accessible to a wider range of persons with disabilities. These guidelines address accessibility of web content on desktops, laptops, tablets, and mobile devices. Following these guidelines will also often make Web content more usable to users in general.

For all websites created after 23 September 2018 the Directive will apply to them from 23 September 2019. For those websites created before 23 September 2018, the Directive will apply to them from 23 September 2020. All mobile applications will have to be accessible by 23 June 2021.

The Directive will be transposed into Irish law via Regulations that are currently being drafted by the Department of Communications, Climate Action and Environment. The NDA will be working with that Department to assist them in implementing the Directive in Ireland.

#### **Key proposal No. 4 – Moving to individual registration only**

Using this method would, in theory, allow persons with disabilities to be registered individually. This would benefit persons with disabilities living in nursing homes, group homes, community dwellings, etc. This would need to be supported by a comprehensive and accessible, national campaign of voter education

#### **Key proposal No. 5 – Enabling a single national register database with unique identifiers**

The NDA welcomes this proposal as advances in technology mean that it is no longer necessary to have physical – or online - registers maintained at local

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<sup>5</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.327.01.0001.01.ENG&toc=OJ:L:2016:327:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.327.01.0001.01.ENG&toc=OJ:L:2016:327:TOC)

<sup>6</sup>

[https://www.etsi.org/deliver/etsi\\_en/301500\\_301599/301549/02.01.02\\_60/en\\_301549v020102p.pdf](https://www.etsi.org/deliver/etsi_en/301500_301599/301549/02.01.02_60/en_301549v020102p.pdf)

<sup>7</sup> <https://www.w3.org/TR/WCAG21/>

authority level. Given our population and our small geographical area, it should be possible to maintain a secure national database. If this proposal becomes part of the project then it should follow the advice on the EU Web Accessibility Directive set out above. There may be valuable learning from the experience of Irish Water regarding their work to compile a new national database from various existing sources, including highlighting any accessibility issues that were raised.

### **Key Proposal No. 6: Moving to verified identity using PPSNs**

This is a development of Key Proposals No. 4 and No. 5. The NDA would support any measure that increases the security and accuracy of a reformed electoral register. Using a name and address as an identifier – as happens with checktheregister.ie – is not as secure an identifier as a PPS number.

### **Key Proposal No. 7 - Data sharing to maintain accuracy and comprehensiveness**

The NDA believes this would benefit persons with disabilities who, for whatever reason, are unable to fully engage with an annual door-to-door or postal canvas due to their disability or their place of residence.

The NDA notes that progress on this proposal would be a key enabler of the separate proposal to develop a single national register database. A very transparent process that explains clearly what data is being shared and from what sources will have to be set out as part of the final proposals for reform. This information would have to be communicated to everyone following the advice set out in the **Customer Communications Toolkit for the Public Service - A Universal Design Approach**.

## **Policy context**

### **UN Convention of the Rights of Persons with Disabilities**

Under Article 29 states are asked to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others (Appendix A). As the UNCRPD came in to force in Ireland on 19 April 2018, the NDA is encouraging all stakeholders to make themselves aware of the articles that impact on their work. The UNCRPD will be the overarching policy framework for disability and mental health, in Ireland, from now on. A reformed electoral register will assist with the progressive realisation of the relevant provisions in Article 29.

## **Current EU approach to voting for persons with disabilities**

Article 20 of the **Lisbon Treaty** gives all citizens of the EU:

“the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;”

Articles 39 and 40 of the EU’s **Charter of Fundamental Rights** state the same rights<sup>8</sup>.

The European Union Agency for Fundamental Rights (FRA) has just published a paper entitled: **Who will (not) get to vote in the 2019 European Parliament elections?**<sup>9</sup> It shows that two-thirds of EU Member States restrict the right to vote for people with disabilities deprived of legal capacity. This undermines their ability to participate in elections on an equal basis with others.

However, the paper also points to slow but steady progress in realising the right to vote for all. Member States are reforming their laws to remove voting restrictions for people with disabilities deprived of legal capacity. But reforms do not always remove all restrictions for all elections and some leave it up to courts to decide.

To realise the right to political participation, FRA’s paper highlights four key components, namely:

- lifting legal and administrative barriers to political participation;
- increasing awareness of the right to political participation of people with disabilities;
- making voting procedures, facilities and election materials more accessible;
- expanding opportunities for participation in political life.

EU Member States are already taking measures in each of these areas, the FRA paper shows. But more efforts are needed so that people with disabilities can exercise their basic democratic rights on an equal basis with others. Addressing these issues will have a big effect on the lives of people with disabilities. Based on the evidence in the paper Ireland is acting in concert with other EU members in introducing legislation that presumes capacity (see below).

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<sup>8</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>9</sup> [file:///H:/Downloads/fra-2019-right-vote-ep-elections-legal-capacity\\_en.pdf](file:///H:/Downloads/fra-2019-right-vote-ep-elections-legal-capacity_en.pdf)

## **National Disability Strategy**

The National Disability Strategy is the Government's primary vehicle for applying the provisions of the UNCRPD across all Department's and public bodies. Action 29 of the **National Disability Inclusion Strategy 2017-21** pledges that the Department will progress the accessibility of voting and voter information.

## **Disability Act 2005**

Please note that it is already a requirement, under sections 26 & 28(2) of the **Disability Act 2005**, that websites and electronic communications, originating within this jurisdiction, are accessible to persons with disabilities<sup>10</sup>.

We recommend that any procurement of services to develop a website or app in this regard contains a reference to the European standard mentioned above.

## **European Accessibility Act**

This Directive<sup>11</sup> will improve the accessibility of a set of products and services for persons with disabilities, such as computers, smartphones, tablets, TV sets, banking ATM and services, payment terminals, e-books and e-readers, e-commerce websites and mobile apps and ticketing machines. It will also ensure that national market surveillance authorities have the competence to hold private entities accountable.

The Act was approved by the European parliament on 13 March 2019. The draft directive now needs to be formally approved by the Council and published in the EU Official Journal to come into force. Member States will then have three years to introduce the new provisions into their national laws, and six years to apply them. Transitional periods are foreseen for specific situations.

## **Assisted Decision-Making Capacity Act 2015**

This Act has not yet been fully commenced, however, it is important for the Department, in preparing to comply with it to consider how the voting process and relevant information is designed and delivered so as to reflect the legislation. The Act presumes, from the outset, that an individual has capacity. The Act proposes to change the law, from the current all or nothing status approach, to a flexible functional definition, whereby capacity is assessed only in relation to the matter in question and only at the time in question. The Act also proposes a

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<sup>10</sup> <http://www.irishstatutebook.ie/eli/2005/act/14/section/28/enacted/en/html>

<sup>11</sup> <http://www.europarl.europa.eu/news/en/press-room/20190307IPR30749/more-accessible-products-and-services-for-disabled-and-elderly-people>



range of decision-making support options to respond to the range of support needs that people may have in relation to decision-making capacity (Appendix B).

The NDA, at the request of the Department of Justice & Equality, has progressed the development of 11 non-health Codes of Practice provided for under section 103(2) of the Act. These Codes of Practice are listed in Appendix C.

While there is no Code of Practice for voting, per se, the Code of Practice on Supporting Decision-Making and Assessing Capacity sets out the guiding principles of the legislation, including the presumption of capacity. Officials working on a reformed electoral register will also need to be aware of situations where an individual could be registering with the support of a decision-maker.

### **Electoral Commission consultation**

The NDA is also making a submission to this parallel public consultation and asks that our advice on that issue be taken into account when considering this submission. The NDA supports the establishment of an electoral commission on a non-statutory basis in order to start the process of bringing together the disparate responsibilities that currently reside across different public bodies. The NDA believes that progress on electoral reform has been hampered by the lack of a single public body to combine all the relevant functions. The NDA also recommends a series of actions to improve the accessibility of the electoral system. These recommendations are based on the principles of Universal Design; these principles also form the basis of the NDA's response to this submission.

If a reformed electoral register becomes a function of a new electoral commission it will be of paramount importance to ensure that all aspects of voter education and engagement will follow Universal Design principles. These principles can be found in the NDA resources listed below.

Reform of the electoral register is a huge undertaking and will only succeed with consistent and accessible engagement with voters and potential voters who will be turning 18 prior to the next election/referendum. The work of the Referendum Commission would be a useful starting point. The Department may benefit from studying any evaluation of/feedback from their information campaigns.



# **APPENDIX A**

## **Article 29**

### **Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

## APPENDIX B

### Decision-Making Support Options

The Act 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. With each of the three decision-making support options decisions can be made on personal welfare, property and finance or a combination of both.

**Assisted decision-making:** a person may appoint a decision-making assistant – typically a family member or carer – through a formal decision-making assistance agreement to support him or her to access information or to understand, make and express decisions. Decision-making responsibility remains with the person. The decision-making assistant will be supervised by the Director of the Decision Support Service.

**Co-decision-making:** a person can appoint a trusted family member or friend as a co-decision-maker to make decisions jointly with him or her under a co-decision-making agreement. Decision-making responsibility is shared jointly between the person and the co-decision-maker. The co-decision-maker will be supervised by the Director of the Decision Support Service.

**Decision-making representative:** for the small minority of people who are not able to make decisions even with help, the Act provides for the Circuit Court to appoint a decision-making representative. A decision-making representative will make decisions on behalf of the person but must abide by the guiding principles and must reflect the person's will and preferences where possible. The functions of decision-making representatives will be as limited in scope and duration as is reasonably practicable. The decision-making representative will be supervised by the Director of the Decision Support Service.

## **APPENDIX C**

### Suite 1

1. Code of practice on Supporting Decision-Making and Assessing Capacity
2. Code of Practice for Court friends
3. Code of Practice for Advocates

### Suite 2

4. Code of Practice for Legal Professionals acting on behalf of the relevant person
5. Code of Practice for Financial Professionals acting on behalf of the relevant person

### Suite 3

6. Code of Practice for Decision-Making Assistants
7. Code of Practice for Co-Decision Makers
8. Code of Practice for Decision-Making Representatives
9. Code of Practice for Attorneys

### Suite 4

10. Code of Practice for General Visitors
11. Code of Practice for Special Visitors