



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

Minister Heather Humphreys, TD.

Disability and Carers' Policy Unit,
Áras Mhic Dhiarmada,
Department of Social Protection,
Store Street,
Dublin 1, D01 WY03

Sent via email to: DCPolicyConsultation@welfare.ie

15 March 2024

Re: Green Paper on Disability Reform – A Public Consultation to Reform Disability Payments in Ireland

Dear Minister Humphreys,

As you are aware, the Commission is both the 'A' status National Human Rights Institution and the National Equality Body for Ireland, established under the *Irish Human Rights and Equality Commission Act 2014 Act*. Under our Act, we are mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality. We welcome the opportunity to provide our views as part of the Department of Social Protection's public consultation¹ on the reform of disability payments set out in the Green Paper on Disability Reform.²

¹ Department of Social Protection, [Green Paper on Disability Reform: A Public Consultation to Reform Disability Payments in Ireland](#) (2023).

² Department of Social Protection, [Green Paper on Disability Reform](#) (2023).

As you will also be aware, we are the designated Independent Monitoring Mechanism ('IMM') for Ireland under the United Nations Convention on the Rights of Persons with Disabilities ('UNCRPD').³ Our mandate as an IMM includes the promotion, protection and monitoring of UNCRPD rights,⁴ and requires the participation of disabled people and their representative organisations in this regard. We are guided by the input of our statutory Disability Advisory Committee ('DAC'),⁵ who we have engaged and will continue to engage with in relation to these proposals.

This consultation is timely, as we have recently presented our parallel report as part of the UN Committee on Economic, Social and Cultural Rights' review of Ireland's performance under its International Covenant on Economic, Social and Culture Rights ('ICESCR') obligations.⁶ Within this report, we expressed our views directly on the Green Paper as well as views related to disabled people's access to decent work and wages, social protection, and the participation of disabled people in decision-making processes. We note the recent publication of the Committee's Concluding Observations,⁷ which will be relevant to this consultation and wider Government's

³ Section 103 of the *Assisted Decision-Making (Capacity) (Amendment) Act 2022* amends section 10(2) of the *Irish Human Rights and Equality Act 2014* to provide that one of our functions is to promote and monitor the implementation in the State of the UNCRPD.

⁴ As provided for under UNCRPD Article 33. The UNCRPD, which Ireland ratified in 2018, establishes two criteria for national implementation and monitoring. First, the monitoring framework must include an independent mechanism in accordance with the Paris Principles. Second, the national framework must work to promote, protect and monitor the implementation of the Convention.

⁵ The Disability Advisory Committee was established in 2019, and is currently chaired by Commission member Dr Rosaleen McDonagh and Commission member Adam Harris is the Vice-Chair. The Terms of Reference of the Disability Advisory Committee are to: a) assist and advise the Commission on matters related to its function of keeping under review the adequacy and effectiveness of law and practice in the State relating to the protection of people with disabilities; b) advise the Commission on the fulfilment of its UNCRPD Article 33 independent monitoring role. See <https://www.ihrec.ie/crpd/>

⁶ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024).

⁷ UN Committee on Economic, Social and Cultural Rights, [Concluding observations on the fourth periodic report of Ireland](#), E/C.12/IRL/CO/4 (1 March 2024). We would particularly draw attention to the recommendations to the State on Maximum available resources (para 15), Non-discrimination (para 23), Right to work (para 27), Minimum wage

work in the area of disability and social protection. In this regard, we call for this consultation and any resulting reform to disability payments be underpinned by the standards of the UNCRPD and ICESCR.⁸

We recognise that the proposals in the Green Paper are relevant to wider concerns in the context of access to social security including the disability employment gap, access to decent work, access to decent wages, and adequacy of living standards. Forthcoming Commission-supported research will examine the cost of disability in the Irish context.⁹ Any resulting reforms from this consultation should be aimed at realising the full and effective participation of disabled people in Irish society.

To inform this consultation and the reform of disability payments, we have set out below observations on the proposals for your consideration. We welcome your comments that the Green Paper is only a consultation document and no final decisions have been made on the reform of disability payments.¹⁰ We also acknowledge the work of you and your Department to consult with disabled people and Disabled Persons' Organisations during this consultation, including extending the deadline for submission. We note that the right of disabled people to full and effective participation in decision-making processes concerning them is not confined to this initial consultation phase but rather is ongoing process requiring close consultation and active

(para 29), Right to just and favourable conditions of work (para 31), Right to social security (para 35), and Poverty (para 39).

⁸ The proposals engage a number of fundamental rights including: Adequate standard of living and social protection: [UNCRPD Article 28](#) and [ICESCR Articles 9 and 11](#); Work and employment: [UNCRPD Article 27](#) and [General comment No. 8 \(2022\) on the right of persons with disabilities to work and employment](#) (7 October 2022); and [ICESCR Articles 6 and 7](#); and, Participation: [UNCRPD Article 4\(3\)](#) and [General comment No. 7 \(2018\) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention](#).

⁹ The report is authored by Karina Doorley, Theano Kakoulidou, Claire Keane, and Agathe Simon (Economic and Social Research Institute).

¹⁰ [Social Welfare Code](#), Dáil Éireann debate, 20 February 2024.



involvement of disabled people representing the wide diversity in impairments.¹¹ There is still time for the issues cited below and elsewhere to be addressed, for disabled people and Disabled Persons' Organisations to be actively included in the process and for the State to ensure its work in this area is guided at all times by the UNCRPD and the human rights model of disability. We will continue to monitor the development of these proposals and may engage with you and your Departmental officials further on these proposals.

Many thanks in advance for your consideration of these issues. We are available to the Department to further discuss the issues raised below.

Yours sincerely,

Deirdre Malone
Director
Irish Human Rights and Equality Commission

¹¹ UN Committee on the Rights of Persons with Disabilities, [General comment No. 7 \(2018\) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention](#). The active and meaningful participation of disabled people in the consultation process in relation to decisions that affect their rights and lives is at the heart of the UNCRPD. This is consistent with the human rights based approach in public decision-making processes, and ensures good governance and social accountability. The UN Committee on the Rights of Persons with Disabilities also recommends that consultations should begin in the early stages and provide an input to the final product in all decision-making processes.

Observations on the Green Paper on Disability Reform

Participation of disabled people and disabled persons' organisations

We reiterate our concerns, shared by civil society regarding the lack of consultation with disabled people and Disabled Persons' Organisations ('DPOs') in the initial development of the Green Paper on Disability Reform.¹² The State is obliged under the UNCRPD to ensure the thorough and robust participation of disabled people in decisions that affect their lives.¹³ The deficiency of this approach is borne out by the significant concerns highlighted by DPOs in consultations since the paper was published.¹⁴ According to these concerns the Paper is predicated on the manifest 'misrepresentation and misunderstanding' that low employment rates for disabled people is a matter of lacking sufficient interest in working or 'not trying hard enough' rather than structural issues and barriers in the services and supports that are supposed to assist in accessing employment.¹⁵

Our DAC has highlighted the Paper's utilisation of a medical model of disability.¹⁶ In particular, efforts detailed within to categorise disabled people based on concepts of 'incapacity', which are rooted in a person's ability to engage in employment. Furthermore, the paper perpetuates the current system of requiring repeat assessment to access social welfare payments. We acknowledge fears that the proposals contained within the paper are based on similar UK welfare

¹² IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) pp. 87–88. See also Independent Living Movement Ireland, [ILMI Summary of the Green Paper on DA Consultations](#) (2023).

¹³ Article 4(3) of the UNCRPD. See also Committee on the Rights of Persons with Disabilities, [General Comment No. 7 on the participation of persons with disabilities, including children with disabilities, through their representative organisations, in the implementation and monitoring of the Convention, CRPD/C/GC/7](#) (2018)

¹⁴ Independent Living Movement Ireland, [ILMI Summary of the Green Paper on DA Consultations](#) (2023).

¹⁵ Such disabling barriers include the lack of accessible transport, accessible built environment, lack of accessible jobs and failure to provide the supports to access employment such as Personal Assistance Services. Independent Living Movement Ireland, [ILMI Summary of the Green Paper on DA Consultations](#) (2023).

¹⁶ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 88.

reforms, which have had devastating consequences for the lives of disabled people.¹⁷ We remain concerned that both the Green Paper and the process through which it was developed raise serious questions about the State's compliance with the UNCRPD and understanding of its obligations.

In the context of this consultation and the proposed reform to disability payments, we reiterate our recommendation that policy changes to disability payments are designed with the active participation of disabled people and their representative organisations at all stages of development, implementation, monitoring and evaluation, in line with international human rights commitments.¹⁸

Disability allowance

Issues have arisen through our legal work about the inaccessible application processes for social welfare payments, particularly with regard to Disability Allowance.¹⁹ There are high rates of initial refusals which are often overturned on appeal, as well as inconsistencies in decision making, exacerbated by the failure to offer people adequate reasonable accommodation and support when applying to social welfare schemes.²⁰ Civil society has further reported procedural barriers to accessing the social welfare appeals system, as well as concerns about transparency and the accessibility of the process.²¹ We recommend that the State review and equality proof all

¹⁷ Independent Living Movement Ireland, [ILMI Summary of the Green Paper on DA Consultations](#) (2023).

¹⁸ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 88.

¹⁹ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 87.

²⁰ For example, from January-September 2023, 21,341 applications for Disability Allowance were received. 12,231 of these applications were awarded, and 13,207 were refused. From January-October 2023, 5,034 appeals for Disability Allowance were received, 2,176 were allowed, and 41 were partially allowed. Department of Employment Affairs and Social Protection, [Social Welfare Benefits](#) (7 November 2023). See also, Age Action, Community Law and Mediation, Crosscare and Disability Federation of Ireland, [Submission to the public Consultation on Changes to the Social Welfare Appeals Regulations](#) (2023) p. 1.

²¹ Age Action, Community Law and Mediation, Crosscare and Disability Federation of Ireland, [Submission to the public Consultation on Changes to the Social Welfare Appeals Regulations](#) (2023).

administrative social protection criteria, application procedures, and the appeals process to ensure they are not impeding access to social welfare for structurally vulnerable groups.²²

Anomalies in the provision of welfare need to be addressed as too many disabled people are prevented from taking up the limited short-term or part-time employment options available to them due to the risk of losing supports.²³ We have raised the issue of income thresholds for social welfare payments like the Disability Allowance.²⁴ As highlighted by our DAC, there is a need to harmonise social transfers so that disabled people do not lose benefits when accessing the labour market, resulting in a net loss of income.²⁵ We recommend that cliff-edges in the social welfare system are removed, and that supports are tapered in response to a change in circumstance.²⁶

Access to decent work

We remain concerned by the disability employment gap in Ireland, which is among the EU's largest,²⁷ and this is a clear reflection of the poor performance to date of the *Comprehensive Employment Strategy for People with Disabilities 2015-2024*.²⁸ Disabled people face acute and

²² IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 86.

²³ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 67; IHREC, [Public consultation on the mid-term review of the Pathways to Work Strategy 2021 – 2025](#) (March 2023) p. 8; IHREC, [Submission to the Department of Social Protection's public consultation on the Roadmap for Social Inclusion: Mid-Term Review](#) (October 2022) p. 12.

²⁴ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 87. See also Joint Committee on Disability Matters (2023) [Employment Participation and Career Progression for People with Disabilities: Discussion](#). We also note that disability payments are generally not available once a person reaches 66, which can create income inadequacy for disabled older people. Citizens Information Board (2023) [Guide to entitlements for over sixties](#), p. 3.

²⁵ For example, the DAC has highlighted that certain job schemes pay extremely low wages but result in a participant not being eligible for social welfare payments.

²⁶ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 87.

²⁷ OECD, Disability, [Work and Inclusion in Ireland: Engaging and Supporting Employers](#) (2021)

²⁸ The labour force participation rate for those experiencing at least one long lasting condition or difficulty to any extent is 40%, compared to 61% for the rest of the population. For people experiencing a long-lasting condition or difficulty to a great extent, this figure is much lower at 22%. See IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 67.



specific barriers to decent work including due to failures by employers to provide reasonable accommodation.²⁹ We remain concerned by the Supreme Court decision in *Nano Nagle School v Daly* that it is not discriminatory to fail to consult employees on their own reasonable accommodation and are of the view this has significantly limited the scope of the duty of employers.³⁰ Other barriers highlighted through the work of the DAC includes limited access to Personal Assistants and Sign Language interpreters, inflexibility in working hours and a paternalistic culture that does not recognise the added value and employability of disabled people.³¹ Further barriers are experienced by disabled women, with family caring responsibilities being a key reason for their lower employment rate than disabled men.³²

²⁹ J. Banks, R. Grotti, É. Fahey and D. Watson, [Disability and Discrimination in Ireland](#) (2018) pp. 61-62; IHREC and ESRI, [Monitoring decent work in Ireland](#) (2021) p. 57. Our experience providing legal assistance to disabled rights holders has revealed issues including the failure to provide suitable working conditions for people with intellectual disabilities, the failure to assign appropriate work, and failures due to the accessibility of websites, technologies and the built environment.

³⁰ *Nano Nagle School v Daly* [2019] IESC 63. The European Committee of Social Rights has requested further information on measures adopted by the State to ensure that disabled employees have the right to consult with their employer in relation to reasonable accommodation. European Committee on Social Rights, [Conclusions 2022: Ireland](#) (2023) pp. 37-38. See also IHREC, [Submission on the Review of the Equality Acts](#) (2023) pp. 82-83; IHREC, [Comments on Ireland's 19th National Report on the implementation of the European Social Charter](#) (2022) pp. 33-34; IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 75. Further, while the Supreme Court held that it was appropriate to consider redistribution of tasks as a reasonable accommodation measure, an employer 'cannot be under a duty entirely to re-designate or create a different job to facilitate the employee'; *Nano Nagle School v Daly* [2019] IESC 63 at [83]. This is at odds with a recent decision of the CJEU, which accepted that it could be an appropriate measure to reassign an employee to a different role in the organization. The Court emphasised, however, that this was subject to not creating a disproportionate burden for the employer and that there needed to be a vacancy to which the employee could be transferred; Case C-485/20 HR Rail ECLI:EU:C:2022:85).

³¹ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) pp. 67-68.

³² Disabled Women Ireland, [Coalition Submission to the UN Committee on the Elimination of all forms of Discrimination against Women: List of Issues Prior to Reporting on Ireland's Report under CEDAW](#) (2023).



In our 2024 parallel report to the UN Committee on Economic, Social and Cultural Rights, we made a number of recommendations related to the above issues which are relevant to this consultation including:

- The State should publish a human-rights based policy on the rights of disabled people to employment based on UNCRPD General Comment 8,³³ with ambitious time-bound commitments to achieve access to decent work and career advancement for disabled people.³⁴
- The State should review and reform employment schemes to provide supports tailored to individual requirements and self-employment options.³⁵
- The State should legislate to establish a proactive duty of employers to consult the person affected when considering the provision of reasonable accommodation.³⁶

Access to decent wages

We have cited on a number of occasions the ableism inherent in section 35(1) of *the Employment Equality Acts*, which permits different rates of remuneration for disabled workers if they are determined to have done less work than a person doing the same job who is without a disability.³⁷ This provision is not derived from the Framework Equality Directive the Acts transpose, is a major groundless qualification on the principle of equal pay for disabled persons, and in fact perpetuates inequality. We are concerned that such a provision may be at odds with the UNCRPD. We recommend that any wage exemptions are strict, limited and exceptional and take account of

³³ Committee on the Rights of Persons with Disabilities, [General comment No. 8 \(2022\) on the right of persons with disabilities to work and employment](#) (7 October 2022)

³⁴ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 68.

³⁵ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 68.

³⁶ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 75.

³⁷ IHREC, [Recommendations on the Review of the Equality Acts](#) (2021) p. 39; IHREC, [Submission on the Review of the Equality Acts](#) (2023) p. 43; IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 70.



international human rights obligations.³⁸ In particular, the different rates of remuneration for disabled people should be removed from the Employment Equality Acts.

Adequate standard of living

We are concerned about the alarmingly high rate of poverty amongst disabled people.³⁹ We recommend that the State develop a strategy and implementation plan on poverty reduction which embraces a human-rights approach; is supported by enhanced data collection and sophisticated poverty measurements; sets ambitious targets and sub-targets; and is accompanied by an independent monitoring and evaluation framework with clear institutional accountability.⁴⁰

³⁸ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 71.

³⁹ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 102. Between 19% and 27% of disabled people are at risk of poverty, which is significantly above the rate for the general population. Indecon International Research Economists, [Cost of Disability in Ireland](#) (2021) p. 46.

⁴⁰ IHREC, [Ireland and the International Covenant on Economic, Social and Cultural Rights](#) (2024) p. 104.