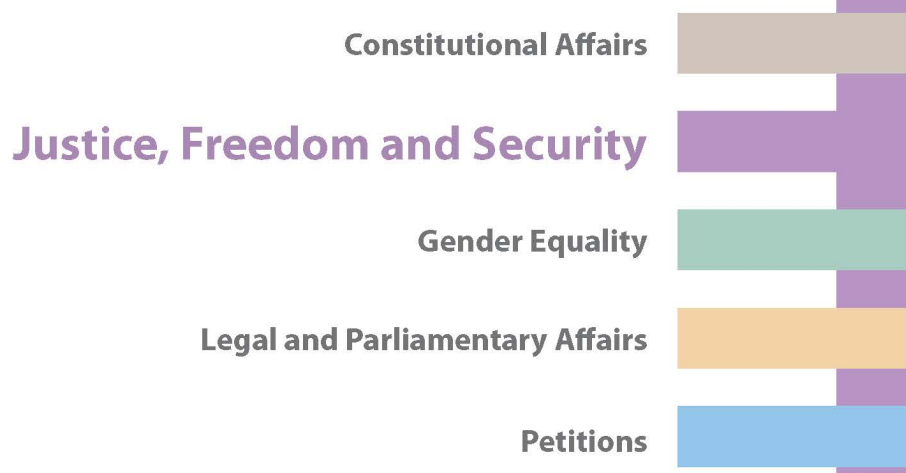


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



**Country Report on Ireland
for the Study on
Member States' Policies for
Children with Disabilities**

STUDY



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

Country Report on Ireland

for the Study on

Member States' Policies for Children with Disabilities

STUDY

Abstract

This study looks at the situation of children with disabilities in Ireland to identify the gaps in the legal frameworks and its implementation, the obstacles faced by children with disabilities and best practices. This country study is part of a larger study which analyses 18 Member States. Based on a comparative analysis of the country studies, the report 'Study on Member States' Policies for Children with Disabilities' provides some recommendations for EU action to enhance the situation of children with disabilities.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

AUTHOR(S)

Dr. Aisling Parkes

Under the supervision of Milieu Ltd. (Belgium); Project Managers: Marta Ballesteros and Nathalie Meurens, e-mail: marta.ballesteros@milieu.be and nathalie.meurens@milieu.be; Milieu Ltd 15 rue Blanche, B-1050, Brussels, Tel: +32 2 514 3601; Fax +32 2 514 3603; web address: <http://www.milieu.be/>.

RESPONSIBLE ADMINISTRATOR

Erika Schulze

Policy Department C - Citizens' Rights and Constitutional Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-citizens@europarl.europa.eu

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ABOUT THE EDITOR

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poldep-citizens@europarl.europa.eu

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LIST OF ABBREVIATIONS

- Art.** Article
- Charter** The Charter of Fundamental Rights of the European Union
- CJEU** Court of Justice of the European Union
- CRC** United Nations Convention on the Rights of the Child
- CRPD** United Nations Convention on the Rights of Persons with Disabilities
- ECHR** Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
- EPSEN** Education for Persons with Special Educational Needs
- ESRI** European Social Research Institute
- EU** The European Union
- HIQA** Health, Information and Quality Authority
- HSE** Health Service Executive
- IHRC** Irish Human Rights Commission
- NHRI** National Human Rights Institution
- NDS** National Disability Strategy
- OCO** Office of the Ombudsman for Children
- TEU** Treaty on the European Union
- TFEU** Treaty on the Functioning of the European Union
- T2016** Partnership Agreement Towards 2016
- UN** United Nations

EXECUTIVE SUMMARY

Over the past few decades, the recognition afforded to the rights of persons with disabilities in Ireland has gained increasing attention and political priority. Prior to this, providing for the needs of children with disabilities was something that was largely left to religious orders. In recent times, there have been some gradual legal and political changes in these areas, particularly in the area of education and access for all persons with disabilities, including children. However, it is important to note that while there is a National Disability Strategy, there is no targeted strategy for children with disabilities in Ireland.

National policy has mainly focused on mainstreaming and inclusion in Irish society. While some positive gains have been made in the field of education, improvement regarding inclusion in society as well as the transition from childhood to adulthood has not been so positive. Generally, Ireland is trying to move away from institutionalisation to inclusion in the general community setting. The legal framework in its current form is of a sectoral nature and not specifically aimed at children with disabilities. Moreover, there is a specific need for awareness-raising in society concerning the rights of children with disabilities.

In Ireland, while there are legislative provisions which aim to protect the rights of persons with disabilities, these are of a piecemeal and mostly sectoral in nature. Indeed, there are very few legal provisions which specifically refer to children with disabilities and their rights.

Ireland ratified the 1989 UN Convention on the Rights of the Child (CRC) in 1992, but only some CRC provisions have been incorporated into certain areas of Irish domestic law. During its first constructive dialogue with the Irish State in 1998, the UN Committee on the Rights of the Child, the body responsible for overseeing the implementation of the CRC, expressed its regret that Ireland's approach to the rights of the child appeared to be fragmented and that there was no comprehensive national policy which fully incorporated the principles and provisions of the Convention. Indeed, when Ireland next appeared before the Committee in 2006, it welcomed the adoption of new legislation and policy measures including, *inter alia*, the National Children's Strategy in 2000. However it noted that there were some areas of child law which were still in need of reform and the State needed to engage in ongoing review of its laws.

Unfortunately, Ireland is one of the few countries of the EU that has yet to ratify the 2006 UN Convention on the Rights of Persons with Disabilities.

As a particularly vulnerable group of children in society, children with disabilities need further protection as a group through specific targeted legislative change. There are still many areas where the rights of children in general, and even more so children with disabilities, are in need of more protection from the State. Bullying is still a major issue in many schools throughout the country and it is arguable that the policy-based approach adopted to tackle this (dating back to 1993) is not sufficiently addressing the issue. Moreover, there is a persistent lack of awareness in society regarding the rights and needs of persons with disabilities, particularly those with hidden disabilities. Finally, it is a major concern, that the effective implementation of legislative provisions is wholly dependent on adequate resourcing; which is something that has proven difficult in recent times, in light of the economic recession

INTRODUCTION

In December 2010, the European Union (EU) became a party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In doing so, the EU recognised the challenges persons with disabilities face in securing their rights and highlighted the need for EU actions in that to be firmly on the agenda of the European Union and its Member States.

Children with disabilities are already vulnerable because they are children. Their disability renders them particularly vulnerable. As such, they deserve specific safeguards and protection from the EU and its Member States.

The key legal framework for EU action in this field is the EU Decision ratifying the CRPD, the requirement under Article 10 TFEU for the EU to combat discrimination based on disability, as well as the EU objective of promoting the rights of the child found under Article 3 TEU. This framework provides the EU with a unique position to push forward for further protection of the rights of children with disabilities, and to develop legislative or policy initiatives. The UN Convention on the Rights of the Child (CRC) provides another basis for action in this area.¹

This country report for Ireland is part of a larger study which aims at providing the European Parliament with an overview of the situation of children with disabilities in selected Member States, with a view to evaluating the need for European legislation to enhance the rights of children with disabilities in the European Union. The project reviews the existing legal, policy and institutional frameworks in 18 Member States. Each country report analyses the implementation of international principles and rights stemming from the CRPD and the CRC to uncover any particular issues that necessitate further policy and legislative actions at national and EU level. The results from the country reports also form the basis for the comparative analysis in the report 'Study on Member States' Policies for Children with Disabilities'.

The key elements deriving from the CRC and CRPD, with regard to children with disabilities include:

- The obligation to act in the best interests of the child;
- The right to non-discrimination;
- The consideration of the evolving capacities of the child;
- The right to participate / the right to be heard;
- The right to be free from violence;
- The right to family life;
- The right to assistance;
- The right to education, including inclusive education.

¹ All the 27 Member States have ratified the CRC, and all 27 Member States have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified).

Given their ratification of both UN Conventions, Member States are obliged to take necessary measures to ensure the respect of the rights set forth for each child or person with a disability within their jurisdiction. Member States should take the appropriate measures to ensure that children are protected against all forms of discrimination or violence, including adopting all appropriate legislative, administrative and other measures for the implementation of those rights. Moreover, the protection of the rights of children with disabilities should be mainstreamed in all policies and programmes in accordance with Article 4(3) of the CRPD on the involvement of persons with disabilities in all decision-making processes.

Due to the scale of this subject and the scarcity of materials available, the scope of this study does not cover in detail the wide range of issues arising from and relating to the situation of children with disabilities. It does not aim to provide an in-depth analysis but rather an overview of the situation of children with disabilities' rights in Ireland. This study presents a snapshot of some of the major issues and obstacles faced by children with disabilities and their families, a legal analysis of the implementation of the main rights and principles recognised in the CRC and CRPD and relevant in the context of the situation of children with disabilities and points to some potential solutions at national and EU level to improve their situation.

Each country report is structured as follows: it first looks at the situation of children with disabilities at the national level. It describes the national legal and institutional framework for the protection of children with disabilities and analyses national implementation of principles and rights developed in the UN Conventions (CRC and CRPD). It then considers specific issues relevant to the situation of children with disabilities, including children as suspects, gender issues, violence and education. Finally, the report covers the mechanisms in place to implement the legal framework, highlighting gaps, problems, best practices, and recommendations found by the literature or via interviews with stakeholders.

1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN IRELAND

KEY FINDINGS

- National action focuses on the following areas: education, mainstreaming, accessibility, removing barriers and promoting inclusion in society.
- The following gaps, problems and challenges have been identified: lack of specific legal framework for children with disabilities, mental capacity (in relation to persons with psychosocial disabilities) legislation, and resources allocation.

1.1. Introduction to the situation of children with disabilities in Ireland

According to the most recent Census of the population of Ireland conducted in 2011, 595,355 people are recorded as having a disability in Ireland. This is equivalent to 13% of the population of Ireland. Interestingly, the National Disability Survey (2006) which uses a broader definition of disability and chronic illness recorded a disability rate of 18%, comparable to other developed countries. In the context of children with disabilities in Ireland, **5% of children between 0-14 years have a disability** compared to 38% of adults over 65 years (Census 2011).²

Up until recent times in Ireland, there was very little State recognition afforded to the rights of persons or children with disabilities. Indeed, catering for the needs of children with disabilities specifically was something that was left to the religious orders who undertook to care for these children in institutional settings. Indeed, Ireland has **traditionally treated persons with disabilities in a very paternalistic manner**, as objects of charity, rather than seeing these people as active agents in their own lives who are capable of living wholesome lives independently. The paradigm **shift towards recognising people with disabilities as rights holders** on a par to people without disabilities reach Ireland in the late 1990s that policies and laws began to change. Despite the increasing recognition given to the rights of persons with disabilities, it is arguable that the fight for rights of children with disabilities is still at a relatively early stage. This is for a variety of reasons which will be discussed later in this report.

While Ireland has signed the UN Convention on the Rights of Persons with Disabilities in 2007, unlike many of its EU counterparts, to date, it has still not ratified this international agreement as various changes are being made to legal and policy frameworks to make this possible. Ireland has ratified the 1989 UN Convention on the Rights of the Child, however, and so is bound to adhere to its legal obligations to promote and protect the rights of all children equally, including the rights of children with disabilities. Ireland is a dualist system which means that in order to become legally binding in Ireland; the Convention needs to be incorporated into the Irish domestic legal system. Until then, the rights contained therein cannot be enforced.

² See Central Statistics Office website available at <http://www.cso.ie/en/index.html> (last accessed on 18 November 2012), figures released October 2012.

Nonetheless, there has been some piecemeal legislative reform which will be discussed later, which does directly impact on the rights of persons with disabilities. However, it is important to note that, to date there has been **no comprehensive piece of legislation dedicated to promoting and protecting the rights of children with disabilities**. Moreover, from a policy perspective, the 2004 National Disability Strategy is not specific to children with disabilities.

In Ireland, there is currently no specific policy governing the rights of children with disabilities. However, there is a National Disability Strategy which provides for all persons with disabilities in Ireland, including children with disabilities. In addition there are policies and guidelines designed to protect the welfare of all children in Ireland, including children with disabilities.

The 2004 **National Disability Strategy** (NDS) overall aims to not only improve the lives of persons with disabilities in Ireland and to promote integration into mainstream society but also to support the equal participation of all persons with disabilities in Irish society.

The NDS is currently the agreed focus of disability policy under the Partnership Agreement Towards 2016 (T2016).³ The Disability Federation of Ireland claims that this means that the issue of disability has now been prioritised in Government policy – an unprecedented commitment.⁴ The vision for persons with disabilities is set out in T2016: 'The parties to the agreement share a vision of an Ireland where people with disabilities have, to the greatest extent possible, **the opportunity to live a full life with their families as part of the local community free from discrimination**'.

The core elements of the National Disability Strategy are:

- To progressively realise the full implementation of the Education for Persons with Special Educational Needs Act 2004. This Act aims to ensure that persons with special educational needs are educated in an **inclusive environment**, where possible.
- To support full implementation of the Disability Act 2005. Under the 2005 Act, six Government departments published sectoral plans⁵ setting out the programme of measures that would be taken with respect to the terms of the provisions and mainstreaming of services for people with disabilities.
- To provide for the assessment for and access to appropriate health care and education services including residential care and community based care and mental health services

The Citizens Information Act 2007 provides for the introduction of a Personal Advocacy Service for certain people with disabilities, who would otherwise have difficulty in getting

³ Social partnership is the process by which the Government, employers, voluntary and community organisations and trade unions work out a plan that covers wages, industrial action, housing, transport, education and other issues that affect the country's social and economic development. This was negotiated and agreed between Government and the other listed bodies in 2006. It ultimately sets out a future vision for Ireland which envisages an all inclusive and internationalised society which ultimately demonstrates a strong commitment to social justice, sustainable economic development and competitiveness. See *Towards 2016: Strategic Document: National Disability Strategy, Visions, Mission and Strategic Objectives* (April 2009) Section 33.2 p.66.

⁴ See 'Guide to Government Policy on Disability for Voluntary Organisations', available at <http://www.disability-federation.ie/index.php?uniqueID=10196> (last accessed on 19 February 2013).

⁵ People with Disabilities, their families, carers, advocates and service providers were consulted on the Sectoral plans before they were completed. Each plan includes arrangements for complaints, monitoring and review procedures.

access to those services. As of yet however, no personal advocacy service has come into existence under this legislation. This has been due to budget cuts.⁶

In terms of child-specific policy, the **Children First: National Guidance**⁷ aims to promote the safety and well-being of all children in Ireland. While the primary responsibility for the care and protection of children rests with parents and guardians, from time to time, parents may require support from the State in carrying out their parental role.

The Government's policy underpinning the Children First: National Guidance is:

- The safety and welfare of children;
- Supporting and promoting family life;
- Using minimum intervention where necessary to keep children safe;
- Multi-agency co-operation to help children to reach their full potential;
- More effective service provision for children; and
- The State and society working together to promote the safety and welfare of children.⁸

The Children First: National Guidance recognises that there are certain children who are more vulnerable to abuse than others, including children with disabilities.⁹ The Guidelines acknowledge the fact that the abuser is more likely to be known to the victim in these circumstances.

1.2. Review of issues and identification of possible regulatory gaps

Ireland has been a State party to the CRC since the early 1990s.¹⁰ In 2006, Ireland presented its Second Periodic Report¹¹ to the UN Committee on the Rights of the Child¹² for their consideration detailing the extent to which Ireland has implemented the CRC in Irish Law. While the UN Committee welcomed various measures of legislative reform including the Disability Act 2005 and the adoption of the National Disability Strategy 2004 (discussed below), it expressed serious concern over the fact that this **framework failed to address the specific needs of children with disabilities**, particularly in the areas of **health care and education**. Indeed, following a review of Ireland's State Party Report, the Committee specifically **recommended** that Ireland:¹³

⁶ Human Rights in Ireland, 'National Advocacy Service in the Spotlight', <http://www.humanrights.ie/index.php/2012/10/31/national-advocacy-service-in-the-spotlight/> (last accessed on 19 February 2013).

⁷ Department of Children and Youth Affairs, *Children First: National Guidance* (Dublin: Government Publications, 2011).

⁸ *Ibid.*, p. 2.

⁹ *Ibid.*, p.11.

¹⁰ Ireland signed the CRC in 1990 and ratified it on 28th September 1992.

¹¹ This report is the most recent report to be sent by Ireland and the next periodic report is long overdue.

¹² This is the international monitoring body responsible for overseeing the implementation of the CRC in countries all over the world.

¹³ 'Concluding Observations and Recommendations of the Committee: Ireland', UN Doc: CRC/C/IRL/CO/2 at paras.41-43, 29/09/2006.

- **Adopt an inclusive and rights-based legal framework** that addresses the specific needs of children with disabilities and implement all relevant provisions of the existing legislation related to children with disabilities;
- Undertake with the involvement of children, **awareness-raising** campaigns which focus on prevention and inclusion, available support and services for children with disabilities, and on combating negative societal attitudes towards children with disabilities; and
- Review existing policies and practices in relation to children with disabilities, giving due attention to the UN Rules on the Equalisation of Opportunities for Persons with Disabilities and the Recommendations adopted by the Committee on its day of General Discussion in the Rights of Children with Disabilities 1997.

In relation to children with psychosocial or intellectual disabilities, Mental Health Reform has **recommended two other priority** areas in need of legal reform in mental health. First, to introduce **capacity legislation**, promoting supported decision making and protection for individuals who do not have the capacity to make decisions in any part of their lives as a result of disability, as our current legislative framework is more paternalistic (as opposed to rights based) in nature. A second priority is to adopt a legislative framework **underpinning mental health policy which is of a more rights-based nature** and is currently being progressed by Amnesty.¹⁴

Overall, the current situation in Ireland concerning persons with disabilities is aptly reflected in the following statement:

'[w]hile policy and legislative provisions affirming the rights laid out in the UN Convention are in place in some areas, most notably in the Disability Strategy, Ireland has fallen down in the application and implementation of policies. When a downturn in the country's economy became apparent in recent years, initiatives relating to children and adults with disabilities were among the first to be shelved for 'financial reasons' (...) At present, there are many serious gaps that must be urgently addressed'.¹⁵

¹⁴ Mental Health Reform website available at <http://www.mentalhealthreform.ie/> (last accessed on 19 November 2012).

¹⁵ Euro child, 'Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with Intellectual Disabilities – National Report of Ireland', (Euro child, December 2011) p.3.

2. OVERVIEW OF THE LEGAL FRAMEWORK IN IRELAND

KEY FINDINGS

- Ireland is a common law jurisdiction. The legal system is dualist in nature which means that any international agreements (including the CRC and the UN CRPD) must be incorporated into domestic law before they have any legal force in Ireland. Ireland has signed and ratified the CRC but has not yet ratified the CRPD.
- In Ireland, there are very few legal provisions which specifically refer to children with disabilities. Most of Irish Law and Policy either focuses on persons with disabilities or on children in general. A sectoral approach is adopted so that legislation relates to specific areas such as education, employment and non-discrimination in the provision of goods and services.

2.1. General overview of the national legal and institutional framework

Ireland is a common law jurisdiction, having been shaped by British law. Thus, there are a number of primary sources of law which are of binding authority: The Irish Constitution 1937 (*Bunreacht na hEireann*); Legislation; EU Law; and Case Law. There are also a number of secondary sources of law which include: international treaties including UN Conventions, scholarly writings and commentaries, canon law and customary law.

Bunreacht na hEireann or the Irish Constitution 1937

While the Constitution is the highest source of law in Ireland, it does recognise the supremacy of EU law in respect of certain areas of law. The Constitution of Ireland 1937, amongst other things, sets out the fundamental rights of all citizens in Ireland. While there is no specific provision for persons with disabilities in the Irish Constitution, all of the fundamental rights apply to persons with disabilities.

In particular, Article 42 of the Irish Constitution recognises that the family is the 'primary and natural educator of the child' but the State is obliged to ensure that each child receives a 'certain minimum' education. Under the Constitution, the State must provide free primary education to all children including children with disabilities, and this was confirmed in the Supreme Court case of *O'Donoghue v. Minister for Education [1996]*.

An amendment to the Irish Constitution has been proposed to include a specific reference to the rights of the child. The proposed amendment has been put to the people of Ireland who voted in favour of the amendment on the occasion of a referendum held on the 10th November 2012. While there is no specific mention of children with disabilities, the amendment will apply to all children in Ireland (see section [2.2.1](#)).

Legislation

Legislation which is enacted by the *Oireachtas*/Legislature is subordinate to and must not conflict with the provisions of the Irish Constitution. There are a number of pieces of

legislation which are relevant to children with disabilities, particularly in the field of education. These include: Education Acts 1998-2012; The Equal Status Acts 2000-2011; the Mental Health Act 2001; the Education for Persons with Special Educational Needs Act 2004 and the Disability Act 2005.

Case Law

Furthermore, Irish courts rely heavily on the doctrine of precedent, where the lower courts are legally bound to follow the decisions of the higher courts. Indeed, two cases issued by the highest Court in Ireland, the Supreme Court have served as landmark judgments in the field of the rights of children with disabilities.¹⁶

EU Law

As already mentioned, by virtue of Article 29.6 of the Irish Constitution, Ireland recognises EU law as supreme in some areas such as employment. Ireland became a member of the EU in 1973.

Secondary Sources of Law

International law, and thus all international treaties, are considered to be secondary sources of law and therefore of mere persuasive authority. Indeed, Ireland is a dualist country, meaning that any **international agreement ratified by Ireland must be duly incorporated into the Irish legal system** before it will be considered to be legal binding. While Ireland has signed the CRPD, it has not yet ratified it and so has not yet committed itself to implementing the Convention's provisions. Ireland is a party to the CRC, and while it has both signed and ratified this international agreement, **it has not yet fully incorporated the principles and provisions** contained therein.

Other secondary sources of law (and thus merely of persuasive authority) include scholarly writings and commentary, canon law and customary law.

2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

The Irish Constitution 1937 (*Bunreacht na hEireann*) applies to ALL citizens of Ireland including persons with disabilities. There are **no disability specific provisions in the Constitution**, however all provisions are applicable to children with disabilities. There are very few provisions under Irish Law which specifically recognise the rights of children with disabilities.

Article 40.1 of the Constitution recognises the right to equality for all citizens before the law and Article 42 recognises the State's responsibility to provide the right to free primary education for all. On 10 November 2012, the Irish electorate has favourably voted on amending the Constitution to insert a provision on the protection children's rights. The

¹⁶ See for example: *O'Donoghue v. Minister for Health* [1996] 1 *Irish Reports* 20 and *Sinnott v. Minister for Education* [2001] 2 *Irish Reports* 545; *TD v. Minister for Education* [2001] 4 IR 259; *FN v. Minister for Education* [23rd March, 1995, unreported) HC; *Comerford v. Minister for Education* [1997] 2 ILRM 134; *McD v. Minister for Education* [2008] IEHC 265; *O'Carolan (a Minor) v. The Minister for Education and Science* [2005] IEHC 296.

general right at the beginning of the new Article 42A recognises that the **State bears responsibility for ensuring that the natural and imprescriptible rights of the child will be protected**. The other provisions of the amendment deal with a commitment to implement legislation in relation to adoption and the **best interests principle** and the **voice of the child** in Child Care, Adoption, Guardianship, Custody and Access cases. These issues are discussed in more details in sections [3.1.1](#), [3.1.4](#) and [3.1.6](#).

The Education Act 1998 makes reference to **inclusive education for children with disabilities**. This is discussed in more detail in sections [3.1.8](#) and [3.2.4](#). Indeed the most recently adopted statutes which specifically pertain to children with disabilities is the Education for Persons with Special Educational Needs Act 2004 (ESPEN Act 2004) and the Disability Act 2005. (The relevant provisions under these Acts are discussed in more detail below.)

In the context of education, under the EPSEN Act 2004, the **National Council for Special Education** can make assessments of educational needs where requested to do so by a Principal of a school. Should the NCSE refuse to undertake the assessment, there is a right of appeal to the Department of Education. In the event that a person with a disability feels that his or her rights have been violated under either of these pieces of legislation, they must use the complaints mechanisms and go through the appeals process enshrined under the Acts, thus exhausting all remedies before they take their case before a court of law.

The Equal Status Acts 2000-2004 have particular importance in the context of **access to good and services**. Any cases alleging discrimination on one of the nine grounds, including disability, can be taken before the Equality Tribunal. The Ombudsman's Office, established under the Ombudsman Act 1980, has the power to investigate complaints from persons with disabilities under Part 3 of the Disability Act 2005 pertaining to access to services, buildings and information.

2.2.2. Institutions and authorities

There are two Government Ministers with responsibility for Children with Disabilities: the **Minister for Children and Youth Affairs**, Frances FitzGerald and a **Junior Minister of State responsible for the area of Disability**, Kathleen Lynch. However, other departments have responsibilities for persons with disabilities in general. Indeed, under the Disability Act 2005, there are a number of Government Departments responsible for implementing sectoral plans which must aim to promote equality and ensure equal access to persons with disabilities within each respective Government sector. These include Department of Health, Department of Children and Youth Affairs, Department of Justice and Equality, Department of Education and Skills and the Department of Transport. The Disability Division of the Department of Community, Equality and *Gaeltacht* Affairs coordinates the implementation group of the National Disability Strategy as well as the work of the Interdepartmental Committee on the CRPD.

The Office of the **Ombudsman for Children**¹⁷ has the power to investigate complaints concerning rights violations of any child in the country in accordance with the Ombudsman for Children Act 2002.

¹⁷ Ombudsman for Children website available at www.oco.ie (last accessed on 19 February 2013).

All cases concerning children in conflict with the law are dealt with in camera in the District court, sitting as the Children's court.

2.2.3. Definitions

The age of **majority** in Ireland is 18 years of age under the Age of Majority Act 1985 and in accordance with the definition of a child under the CRC. Thus, all children under the age of 18 years of age are regarded as children under Irish Law. However, persons with disabilities are referred to as dependents in some cases, where they are incapable of living independent lives.

The definition of **Disability** which currently underpins the National Disability Strategy in Ireland is (...) 'disability', 'in relation to a person, means a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment'.¹⁸

This definition is enshrined under the Disability Act 2005 as well as the Education for Persons with Special Educational Needs Act 2004. It reflects the social model of disability as opposed to the old medical model which predominated in the past.

However, the Equal Status Act 2000 defines disability as '[t]he total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body; The presence in the body of organisms causing, or likely to cause, chronic disease or illness; The malfunction, malformation or disfigurement of a part of a person's body; A condition or malfunction which results in a person learning differently from a person without the condition or malfunction; or A condition disease or illness which affects a person's thought process, perception of reality, emotions or judgement, or which results in disturbed behaviour'.

The Education for Persons with Special Educational Needs Act 2004 (ESPEN Act) defines special educational needs as arising from 'a restriction in the capacity of a person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition'.¹⁹

The latter definition takes account of the fact that a child can have a disability but not have any special educational needs arising from that disability which requires additional supports in school.

¹⁸ Section 2 of the Disability Act 2005.

¹⁹ Section 1 of the Education for Persons with Special Educational Needs Act 2004.

3. LEGAL FRAMEWORK AND IMPLEMENTATION ASSESSMENT

KEY FINDINGS

- The legal framework is piecemeal in nature and in need of direction. Irish policy towards persons with disabilities is too general in nature and not designed for the specific needs of children with disabilities.
- The implementation of CRPD and CRC rights and principles is moderate depending on the area of rights being explored. In any case, Ireland is not a party to the CRPD and so its provisions have not been implemented. While Ireland has succeeded in improving the rights of children in general, children with disabilities need further protection owing to their vulnerable position in society.
- The main issues faced by children with disabilities in Ireland include amongst other things, bullying and the overall lack of awareness in society and consistent barriers to participation and inclusion as a result. A lot of service provision for children with disabilities is dependent on State resources, which in the current economic climate are sparse.

3.1. Implementation of the provisions of the CRPD and CRC

As already mentioned, Ireland is not yet a State Party to the CRPD. Thus, implementation of the provisions of this international treaty is poor. Moreover, despite the fact that Ireland has been a party to the CRC for 20 years now, it has still not fully incorporated the CRC into the domestic legal framework. **Law reform has been piecemeal and *ad hoc* in relation to children's rights in general** and in the context of persons with disabilities, the law has really **only evolved in the area of education**.

3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)

Under Article 41 of the Irish Constitution, it is presumed that the best interests of the child are served in the marital family. The primacy principle also underpins the Draft National Standards for Residential and Foster Care Services for Children and Young People and is contained in the Implementation Plan of the Commission into Inquire Child Abuse (2009).

As already mentioned in chapter 2.2., Article 42 A contains two distinct references to the best interest's principle. The new Article 42 A.4.1 states that

'Provision shall be made by law that in the resolution of all proceedings-
i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or
ii **concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration**'.

Thus, the new amendment commits the State to introducing legislation in the area of adoption and child care proceedings as well as guardianship custody and access. When a court is making a decision in these areas only, the legislation will require the Court to consider the best interests of the child being of paramount importance. Unfortunately, this legislation has not been drafted and so it is hard to anticipate what this legislation will look like. It is unfortunate that this principle is not being placed on a constitutional footing. This referendum held on 10th November 2012 resulted in a vote in favour of the amendment by 58% to 42% with a 33.1% turnout.²⁰ This result is currently subject to challenge before the Irish High Court.²¹

The principle of the best interests of the child is currently reflected in the Guardianship of Infants Act 1964 where in any decision concerning a child, their 'welfare' must be of paramount consideration. It is also reflected under the Child Care Act 1991 where the State has a responsibility to promote and protect the welfare of all children in Ireland. The Children Act 2001 indicates, as one of its principles, due regard to the interests of the victim.

Lastly, the ESPEN Act provides that education of children with special education needs should be consistent with the best interests of the child.²²

3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)

The principle of non-discrimination is reflected under the Equality guarantee of Article 40.1 of the Irish Constitution. However, the Constitution does not specifically refer to disability as grounds of discrimination. In the context of persons with disabilities specifically, **disability is one of the nine grounds of non-discrimination** enshrined in the Equal Status Acts 2000-2012 and the Employment Equality Acts 1998-2011.²³ The Act applies *inter alia* to access to public goods and services, housing and accommodation, as well as education. The Equal Status Acts prohibits direct and indirect discrimination. Indirect discrimination is defined as occurring when suspect measures effectively create a disadvantage to persons with disabilities and harassment is defined as occurring when the relevant conduct actually violates the victim's dignity.²⁴ The Equal Status Act also focuses on a range of specific non-discrimination areas such as access to education.

The Equal Status Act effectively imposes requirements on service providers to do all that is **reasonable to accommodate**²⁵ the needs of a person with disabilities by providing special treatment or facilities. The refusal or failure to provide reasonable accommodation is

²⁰ See The Children Referendum website available at <http://www.referendum2012.ie/> (last accessed 19 November 2012).

²¹ Irish Examiner, 'Legal challenge brought against result of children's rights referendum', available at <http://www.irishexaminer.com/breakingnews/ireland/legal-challenge-brought-against-result-of-childrens-rights-referendum-574810.html> (last accessed on 19 February 2013).

²² ESPEN Act 2004, Section 2 available at <http://www.irishstatutebook.ie/2004/en/act/pub/0030/print.html> (last accessed on 19 February 2013).

²³ Equal Status Act 2000, available at <http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html> (last accessed 19 February 2013).

²⁴ The Equality Authority, 'Your Equal Status Rights Explained: Guide to the Equal Status Acts 2000-2008', available at <http://www.equality.ie/Files/Guide-to-the-Equal-Status-Acts-2000-2008.pdf> (last accessed 19 February 2013).

²⁵ The right to non-discrimination requires reasonable accommodation in the sense that 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, [must be made] 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 2 CRPD). As a result, the application of the right to non-discrimination 'does not mean identical treatment', it may require 'taking special measures in order to diminish or eliminate conditions that cause discrimination'.

considered discrimination. The accommodation is not deemed reasonable when 'such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question'.²⁶ In this case, the service provider is understood *inter alia* as the person providing goods and services to the public in general, as well as educational establishments.

In addition, the Irish Government has an obligation under Part 3 of the Disability Act 2005 to make all public buildings accessible to persons with disabilities. This includes access to public buildings (section 25); access to services (section 26); accessibility of services supplied to a public body (section 27); access to information (section 28); access to heritage sites (section 29) and 'sectoral plans' (sections 32 to 37).

Any case alleging discrimination on the grounds of disability can be taken before the Equality Tribunal, or the Irish Courts. In addition, the Ombudsman's Office is competent to investigate complaints from persons with disabilities pertaining to access to services, building and information. See further details in section [4.1](#).

In a study on the experience of discrimination in Ireland, Disability has been identified as one of the strongest predictors of discrimination risk, **people with disabilities being at higher risk** across all domains except education. The areas of particular concerns with regard to discrimination based on disability are the health sector and transport services, where persons with disabilities are over five times more likely to report discrimination. The study points also to a greater incidence of repeat discrimination, with 77 per cent of those who experienced discrimination reported that it occurred more than once. Furthermore, 35 per cent of persons with disabilities reporting discrimination said the experience had a serious impact on their lives.²⁷

3.1.3. Evolving capacities of the child (Art. 5 CRC and Art. 3 CRPD)²⁸

The principle of the evolving capacities of the child is not currently reflected under Irish law, except in the context of including the wishes of the child in decision-making through the appointment of a Guardian Ad Litem, where the age and maturity of the child must be taken into consideration. However, this may change with the adoption of the proposed amendment on children's rights to the Irish Constitution. The amendment provides that once a child is capable of forming views, those views must be ascertained and given due weight in proceedings before Courts in accordance with the age and maturity of the child. However the amendment is not yet in force (see below section 3.1.4).

In addition, the age and maturity of the child may be taken into account in specific sectors or legislation. For example, the Children's Act 2001 places a number of requirements on the *Garda Síochána* and the courts to take into account the age and maturity of the child when dealing with them and making certain decisions such as an appropriate sanction.

²⁶ Section 4 of the Equal Status Act.

²⁷ Helen Russell, Emma Quinn, Rebecca King O'Riain and Frances McGinnity, 'The experience of discrimination in Ireland', the Equality Authority, 2008, available at <http://www.eapn.ie/eapn/wp-content/uploads/2010/04/experience-of-discrimination-in-ireland-analysis-of-QNHS-equality-module-2008.pdf> (last accessed on 19 February 2013), p. xii.

²⁸ The concept of evolving capacities of the child establishes that as children acquire enhanced competencies and experience, there is a reduced need for direction and a greater capacity for children to take responsibility for decisions affecting their lives. In light of the CRC, the concept of evolving capacities of the child entails that parents (or persons legally responsible) should have the right to provide, in a manner consistent with the evolving capacities of the child, appropriate guidance in the exercise by the child of his/her rights. See the report 'Study on Member States' Policies for Children with Disabilities' for more details on this concept.

3.1.4. The right to be heard/to participate (Art. 12 CRC; Arts. 7 and 30 CRPD)

Currently the child does **not have a general legal right to express views directly** in any matter affecting them as is required under the CRC and CRPD. There are some provisions under the Children Act 1997 in terms of indirect participation through a Guardian Ad Litem. The provision for the appointment of a GAL in private proceedings affecting a child has not yet been commenced however (since 1997) and is subject to the discretion of a judge in public law proceedings.

It should be noted that with respect to **criminal proceedings**, Section 96 of the Children's Act specifically states that any court, when dealing with children charged with offences, must have regard to the principle that children have rights and freedom before the law equal to those enjoyed by adults and, in particular, a **right to be heard and to participate in any proceedings of the court** that can affect them. As such, whilst the child may not have an absolute right to be heard, there is a legal presumption favouring such a position. It is also clear how this rule is applied in practice. However, it is notable that subsequent articles of the Act, such as on provision of information including reports relevant to the child, require this information to be provided to a range of people such as the parents, but not to the child him/herself. This may be indicative of the general approach to child participation.

Furthermore, the Child Care Act requires Courts to give due consideration to the wishes of the child, having regard to his/her age and understanding in relation to proceedings on the care and protection of a child.²⁹

The new constitutional amendment referred to above does makes reference to the **principle of respect for the views of the child**. However, it is a very cautious and **limited approach**. In the context of the voice of the child, the amendment provides that laws will be enacted applicable to childcare, adoption, guardianship, custody and access proceedings only, providing that once a child is capable of forming views, those views shall be ascertained and given due weight in accordance with the age and maturity of the child.

However, the amendment limits the child's voice to family law proceedings and thus leaves out all of the other areas of a child's life to which they should be entitled to be heard in accordance with Article 12 CRC. Moreover, it specifically excludes administrative proceedings. While this provision will ultimately only place this principle on a legislative footing, it is based on Article 12 CRC, albeit to a very limited extent.³⁰ Indeed, despite the fact that all children, including children with disabilities,³¹ have a right to be heard in all matters affecting them – it seems that this right will only be enshrined in law to the extent that it applies to judicial and administrative proceedings affecting children only.

With respect to the right to participation, the Education Act provides that students of post-primary schools may establish a student council. However, no general legal right of children

²⁹ Child Care Act, Section 24, available at <http://www.irishstatutebook.ie/1991/en/act/pub/0017/print.html> (last accessed on 19 February 2013).

³⁰See further Dr. Aisling Parkes, 'How will the proposed constitutional amendment affect the areas of adoption and voice of the child?', available at <http://www.constitutionproject.ie/wp-content/uploads/2012/10/Aisling-Parkes-Oct-18-2012.pdf> (last accessed on 19 November 2012); Human Rights in Ireland, 'Legal Analysis of the Children's Referendum: Article 42A.4.2', 2012, available at <http://www.humanrights.ie/index.php/2012/10/23/legal-analysis-of-the-childrens-referendum-article-42a-4-2/>; The Irish Examiner, Dr. Aisling Parkes, 'Correcting mistakes of the past', 2012, available at www.irishexaminer.com/analysis/correcting-mistakes-of-the-past-201954.html (last accessed on 19 November 2012).

³¹ Parkes A., 'Hearing the Voices of the Vulnerable: Children with Disabilities and the Right to be Heard under International Law'. *Irish Law Times*, (2008) pp.170-176.

to participate in all matters affecting them has been identified in the Constitution or otherwise.

3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD)

The Constitution in its Preamble refers broadly to the dignity of the individual. However the reference is not justiciable.

Corporal punishment is prohibited in schools. In 1982, Department Circulars 9/82 and 5/82 stated that it should not be used, and teachers' immunity from criminal prosecution was removed by article 24 of the Non-Fatal Offences Against the Person Act 1997, which states: 'The rule of law under which teachers are immune from criminal liability in respect of physical chastisement of pupils is hereby abolished'.

Corporal punishment remains lawful in Irish homes. The common law right to use 'reasonable and moderate chastisement' in disciplining children was confirmed in article 37 of the Children Act (1908). While the Children Act 2001 repealed article 37, removal of the common law defence requires an explicit provision in addition to this repeal.

Interestingly, following a complaint against Ireland brought in 2003 by the World Organisation Against Torture under the Collective Complaints procedure of the European Social Charter, the European Committee of Social Rights concluded that Ireland was in violation of Article 17 of the Revised Charter because corporal punishment of children within the home is permitted by the common law defence of reasonable chastisement, which is also applicable in foster care, residential care and certain childminding settings.³²

The Government has consistently indicated that it is committed to a prohibition on the use of corporal punishment in the home. In December 2011, media reports stated that Minister for Children Frances Fitzgerald was considering prohibiting all corporal punishment by parents.³³ In response to the recommendations to prohibit corporal punishment made during the Universal Periodic Review of Ireland in 2011, the Government stated that the matter was under continuous review.³⁴

In order to protect children and children with disabilities from violence including sexual violence, Ireland has a range of legislation in place criminalising violent or sexual acts committed against children in general as well as legislation focused on children with disabilities. Besides, general laws on rape, sexual assault and aggravated sexual assault³⁵, which apply to all children, it is a **criminal offence to engage or attempt to engage in a sexual act with a child under the age of 15 years**.³⁶ The maximum sentence for this offence is life imprisonment.

Section 3 of the Criminal Law (Sex Offences) Act 2006³⁷ provides that it a criminal offence to engage or attempt to engage in a sexual act with **a child under 17 years**. The maximum sentence for this offence is five years or ten years if the accused is a person in authority. A person in authority includes a parent, step-parent, guardian, grandparent,

³² Resolution ResChS(2005)9, Collective complaint No. 18/2003 by the World Organisation against Torture (OMCT) against Ireland, adopted by the Council of Ministers on 8 June 2005).

³³ *The Irish Times*, 28 December 2011.

³⁴ 6 March 2012, A/HRC/19/9/Add.1, Report of the Working Group: Addendum, paras. 53 and 54.

³⁵ Under the general Criminal Law (Rape) Act 1981 or the Criminal Law (Rape) (Amendment) Act 1990.

³⁶ Criminal Law (Sexual Offences) Act 2006.

³⁷ As amended by Section 5 of the Criminal Law (Sexual Offences) (Amendment) Act 2007.

uncle or aunt of the victim, or any person acting in loco parentis (in place of parent or parents) to the victim, or any person responsible for the education, supervision or welfare of the victim.

The Criminal Justice Act 2006, which came into effect on 1 August 2006, provides for a new offence of reckless endangerment of children. This offence may be committed by a person who has authority or control over a child or an abuser and who intentionally or recklessly endangers a child by putting them at substantial risk of being a victim of serious harm or sexual abuse.

The Child Trafficking and Pornography Act 1998 deals with a number of child trafficking offences as well as child pornography offences involving children under the age of 17. With regard to domestic violence, the Domestic Violence Acts 1996-2002 gives the HSE certain powers to intervene in cases where the safety and welfare of a child is at risk in the family.

With respect to children with disabilities, Section 5 of the Criminal Law (Sexual Offences) Act 1993 makes sexual intercourse or buggery with a **mentally impaired person** (other than a spouse) a criminal offence for which the maximum penalty is ten years imprisonment.³⁸ The Act also sets out a specific offence of gross indecency by a male with a male who is mentally impaired for which the maximum penalty is two years imprisonment.

Lastly, the Children First: National Guidance provides that 'parents, teachers and all staff in services for children with disabilities need to be familiar with the indicators of abuse and to be alert for signs of abuse. All agencies/organisations working with children with disabilities should have clear guidelines for preventing, identifying and reporting child abuse or neglect and should ensure that staff and volunteers are trained in the use of the Children First: National Guidance'.³⁹

Further issues relating to violence against children are addressed below in section [3.2.2](#).

3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)

Articles 41 and 42 of the Irish Constitution, the highest source of domestic law in Ireland, gives strong recognition and protection to the family based on marriage of which the right to family life is an integral part. However, the Irish Constitution does **not afford any recognition to family structures which fall outside the marital family**.

In addition, Ireland partially incorporated the European Convention on Human Rights into Irish Law in 2003 *via* the **European Convention on Human Rights Act** (ECHR Act). The principle effects of this Act is that it requires Irish Courts to interpret and apply Irish law, as far as is possible, in a manner compatible with the State's obligations under the Convention provisions. In addition, 'every organ of the State shall perform its functions in a manner compatible with the State's obligations under the Convention provisions'.

³⁸ Criminal Law (Sexual Offences) Act 1993, Section 5 available at <http://www.irishstatutebook.ie/1993/en/act/pub/0020/sec0005.html#sec5> (last accessed on 19 November 2012).

³⁹ Department of Children and Youth Affairs, *Children First: National Guidance*, 2011. See further details on the guidance in [section 1.1](#).

As such, in accordance with Article 8 ECHR, **courts should interpret national law and organs of State should operate in a way which complies with the obligation to respect a person's private and family life.**

Section 5 of the ECHR Act allows the Courts to make a 'declaration of incompatibility' where the court finds that legislation or a rule of law is incompatible with the State's obligations under the ECHR. However, the making of a declaration of incompatibility does not affect the continuing enforcement or operation of the law in question which continues to have effect until such time as it is either amended in legislation or struck down as being unconstitutional by the Superior Courts.

Following the amendment to the Constitution, the new Article 42A reads that 'in exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child'. However the amendment is not yet into force.⁴⁰

In the context of the CRC, according to the Second Periodic Report of Ireland to the Committee on the Rights of the Child in 2006, it was stated that 'it is government policy to provide supports for children with a disability to enable them to live with their families'.⁴¹ The reality is that **most children with disabilities live at home**.⁴² Where this is not possible, children are cared for in residential settings which are run by health boards or non-statutory organisations.⁴³

Most children with disabilities who are living in residential institutions will have severe and profound disabilities requiring around the clock care. Some families avail of respite care services which may last for short periods of time a few times a year or involve a longer stay of weeks or months if required. Some children may be unable to live at home however, due to the fact that they have very high care needs and so these children may live in foster homes or in long-term residential care. Residential care can be in a home run by the HSE, a children's residential centre, a school or other suitable place of residence. The Child Care (Placement of Children in Residential Care) Regulations 1995 state the requirements for the placing of children in residential care and the standards for residential centres which are registered with the HSE.

The Programme for Government aims to 'fundamentally reform the delivery of child protection services by removing child welfare and protection from the HSE and creating a dedicated Child Welfare and Protection Agency, reforming the model of service delivery and improving accountability to the Dáil'.

Acting on this commitment, the Minister for Children and Youth Affairs-Minister Fitzgerald established the Task Force on the Child and Family Support Agency in September 2011. Its main remit was to focus on best practice in child welfare, family support and public

⁴⁰ UCD Constitutional Studies Group, 'A Guide to the referendum on the 31st Amendment to the Constitution', available at http://www.ucd.ie/t4cms/Guide_to_the_31st_amendment.pdf (last accessed on 19 February 2013).

⁴¹ Second Periodic Report: Ireland, UN Doc. CRC/A/IRL/2 at para. 486.

⁴² Understanding Intellectual Disability and Health website, available at <http://www.intellectualdisability.info/families> (last accessed on 19 February 2013).

⁴³ Citizens Information Board, 'Entitlements for children with disabilities', 2010, available at http://citizensinformationboard.ie/publications/entitlements/downloads/children_with_disabilities.pdf (last accessed on 20 February 2013).

administration consistent with the Government's public sector reform agenda. The Minister has since been given approval for the transition of existing HSE child protection and welfare services to this Agency.

3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)

Parents of children with disabilities are entitled to the same state support as are available for all children in Ireland. Such support includes public health nurse visits, Child Benefit, a free pre-school year and free primary education. There are also services and payments specifically for people with disabilities.

The Department of Social Protection provides **financial support for persons with disabilities and their carers**. The Health Service Executive (HSE) provides health and personal social services. Disability support services may be provided directly by the HSE, or more usually, by HSE-funded voluntary organisations (who work on of behalf of the HSE).

Voluntary organisations or charities can give useful information, advice and support as well as engage in direct service provision in many areas within the country. The National Federation of Voluntary Bodies' Informing Families project has produced best practice guidelines for how families are informed of their child's disability – this is discussed further below.

Parents of children with disabilities may also be able to avail of an Incapacitated Child **Tax Credit** from the Revenue Commissioners if their child is assessed as being permanently disabled. Training for parents of children with disabilities in skills such as sign language if their child is deaf or parent-delivered speech therapy may be provided to parents. Children who are visually impaired or deaf may be referred to the Visiting Teachers Service. The **Early Intervention Team** is a support service for children from birth to age six with childhood developmental delay or disabilities. It is provided directly by the HSE in some parts of the country and in others by voluntary bodies. The intervention team works in partnership with parents.

There are Children's Disability Teams in certain areas throughout Ireland provided by the HSE/Voluntary bodies. These teams aim to provide a comprehensive service to children aged 6–18 years of age with a physical, sensory or intellectual disability. The multi-disciplinary team works together with the parents to provide a service that meets the needs of the child. The team may include the following: Clinical psychologists; Community nurses; Occupational therapists; Paediatricians; Physiotherapists; Respite co-ordinators; Social workers and Speech and language therapists.

If a child is blind or visually impaired, his or her parents have the option of registering their name with the National Council for the Blind of Ireland.

According to the Second Periodic Report of Ireland submitted to the UN Committee on the Rights of the Child in 2006, it was pointed out that there are a number of schemes of assistance available for people with disabilities including children.⁴⁴ However, upon further inspection, it is clear that most of these schemes are aimed at adults with disabilities. These schemes are administered by the Health Service Executive, the Department of Social and Family Affairs, Local Authorities and the Revenue Commissioners.

⁴⁴ Second Periodic Report: Ireland, UN Doc. CRC/A/IRL/2 at paras. 493-502.

The schemes which are directly relevant to children with disabilities include:

- **Domiciliary Care Allowance** which is paid monthly in respect of children under the age of 16 years with a severe disability, who live at home and who require care and attention which is considerably more than that of a child without a disability;
- An **Annual Care Respite Grant** where a Carer has been paid Carer's Allowance/ Domiciliary Care Allowance;
- long term illness scheme to provide drugs and medicines free of charge for children with certain specified disabilities; and
- the **Disabled Persons Grant Scheme** which provides grants towards the adaptation of existing houses to meet the needs of people with disabilities including children.

3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD)

From 2010, all children in Ireland are entitled to one year's free **pre-school education**. This covers the period from birth to 6 years. In practice, almost all 5 year olds and about half of 4-year olds actually attend primary schools.⁴⁵ Some pre-schools have staff that are trained to work with children with special needs.

Local Health Offices and/or voluntary bodies provide services for young children with severe or profound disabilities. The services are provided in Child Education and Development Centres and are generally run by a clinical director and staffed by nurses with an intellectual disability qualification.

The Health Service Executive is responsible for providing psychological services and speech and language therapy services for pre-school children with disabilities who are assessed as needing these services. Assessments of children under the age of 5 are carried out under the assessment of need provisions of the Disability Act 2005.

The **Visiting Teacher Service** of the Department of Education and Skills provides a service to young children with visual and/or hearing impairment, from the age of 2 years.

There are a small number of special pre-school class units for children with autistic spectrum disorders. These units are attached to primary schools.

The statutory entitlements of children with disabilities were first set out in the Education Act 1998-2012. One of the objectives of this Act is to give practical effect to the constitutional rights of children to **free primary education** under Article 42 including children with disabilities up to the age of 18 years of age. The Act requires that schools use their available resources to ensure the educational needs of all pupils, including those with disabilities. However, the qualifications in the Act threaten to severely limit this right by making references to 'as far as practicable' and 'having regard to available resources'.⁴⁶ Significantly, the latter defences apply to both the relevant Minister as well as the legislation.

⁴⁵ Citizens information website available at http://www.citizensinformation.ie/en/education/pre_school_education_and_childcare/early_childhood_education.html (last accessed on 20 February 2013).

⁴⁶ Kilkelly U., *Barriers to the Realisation of Children's Rights in Ireland* (Office of the Ombudsman for Children, August 2007).

The Education for Persons with Special Educational Needs Act 2004 and the Disability Act 2005 are key pieces of legislation designed to ensure children with disabilities can avail of the right to inclusive education. This is explored in more detail in section [3.2.4](#) below.

3.2. Specific issues faced by children with disabilities

3.2.1. Gender vulnerability

There is very little information governing any gender discrimination which children with disabilities may face. The grounds of gender and disability are two of the nine grounds covered by the Equal Status Acts 2000-2011 in terms of the provision of goods and services. This is not something which has been investigated to date.

There is no legal framework governing the issue of sterilisation of children with disabilities and there are **no targeted reproduction education** programmes for girls or boys with disabilities. However, that is not to say that these practices do not occur. Indeed, in Ireland, for a woman under the age of 18 years, **court approval for sterilisation** may be sought through the *parens patriae* jurisdiction of the courts.⁴⁷ Sometimes sterilisations are carried out for non-therapeutic reasons, such as to prevent pregnancy or relieve the burden of preventing pregnancy from the carers, as opposed to medical reasons such as the effects of menstruation on the particular person.

3.2.2. Violence

There is a considerable amount of research which indicates that **persons with disabilities are particularly vulnerable to abuse**.⁴⁸ This is particularly the case for children in care but can also be the question for children within a family setting and in broader situations. Their vulnerability can arise, in particular, due to a lack or reduced capacity to consent to sexual activity. **Another factor can be poor exposure to sex education and sexual health programmes**⁴⁹ making children with disabilities even more vulnerable. This is especially true of children with intellectual disabilities.

The issue of abuse against children in institutional care has been very high on the Irish agenda for some time. This follows a number of high profile cases of child abuse of such children. As a result, a Commission was established⁵⁰ to carry out **inquiries into the abuse of children in institutions between 1914 and 2000**. In light of the findings of its Report,⁵¹ it is well accepted that children with disabilities in residential care in Ireland were particularly vulnerable to abuse in the past. This reflects evidence which shows that children with learning disabilities face a much higher risk of abuse or mistreatment than the general population. This continues to be of relevance and concern today in view of the fact that of the 10,000 people with disabilities **living in residential or respite care** in Ireland, **about 500 are children**, according to the latest available figures.

⁴⁷ Madden D., *Medicine, Ethics and the Law* (Ireland: Butterworth's, 2002) p. 404.

⁴⁸ Sobsey, & Doe (1991) 'Patterns of sexual abuse and assault' *Journal of Sexuality and Disability*, 9, pp. 243-259.

⁴⁹ Allen and Seery, *The current status of relationships and sexuality education practice for people with an intellectual disability in Ireland* (Dublin: Irish Sex Education Network, 2007).

⁵⁰ *Commission to Inquire into Child Abuse Act 2000 as amended by the Amendment Act of 2004*.

⁵¹ Chapter 13 of this report deals specifically with Special Needs Schools and Residential Services. See *Report of the Commission to Inquire into Child Abuse*, Volume III – Chapter 13. This report contains horrific accounts of the abuse endured by children living in institutions. Abuse has been referred to as physical, sexual, neglect and emotional abuse.

Currently, in Ireland, there are over 100 centres offering residential or respite care to children with disabilities. While these children are not in the care of the State per se, they are cared for by the State. The majority of these centres are run by the non-statutory sector and have not been subject to inspection under the Child Care Act 1991.⁵² However, since the enactment of the Health Act 2007, **these centres will be subject to inspection** by the Health and Information Quality Authority (HIQA).

The modern emphasis is on provision of residential care for people with disabilities in ordinary community settings and the Government has made a commitment to the closure of the remaining mental health institutions in the country. Moreover, the continued **integration of services for persons with disabilities within mainstream services** will also have knock-on effects on protection and so increased vigilance and awareness-raising will be crucial in such settings. The Ombudsman for Children has expressed concern about inadequate protection in relation to children with disabilities in residential care.⁵³

In relation to sexual violence against persons with disabilities in general, an analysis of data entered into the Rape Crisis Network Database over a period of 3 years (2008-2010) disclosed that 197 persons with disabilities attended Rape Crisis Centres (RCC) in Ireland for counselling and support. More than 93% of these were survivors of sexual violence. Amongst the key findings included the revelation that survivors disclosed a lower incidence of sexual abuse solely as children than people with no disabilities (48% compared to 61%).⁵⁴ Further findings included:

- Female survivors with disabilities disclosed an increase in sexual violence as they aged compared with female survivors with no disabilities.
- From this, we can say that female survivors with a disability display an increase in vulnerability to sexual violence as they aged.
- **Survivors with disabilities were subjected to more multiple incidents of sexual violence than those with no disabilities.**⁵⁵

It has been acknowledged that '[f]actors that appear to increase the vulnerability of this population including deficiencies of sexual knowledge, physical and emotional dependence on caregivers, multiple care-giving, limited communication skills and behavioural difficulties'.⁵⁶

In 2005, the European Social Research Institute (ESRI) conducted research into the domestic abuse of men and women in Ireland. It was discovered that among the groups most likely to have experienced abuse were those with a disability or a health condition.⁵⁷

⁵² O'Brien C., 10,000 with disabilities living in care facilities with no inspections, The Irish Times, 16th August 2012.

⁵³ Ombudsman for Children, *Annual Report 2006*. See Ombudsman for children website at <http://www.oco.ie/> ([last accessed on 20 February 2013](#)).

⁵⁴ Rape Crisis Network Ireland, *Sexual Violence Against People with Disabilities: Data Collection and Barriers to Disclosure* (October, 2011) p.48.

⁵⁵ Rape Crisis Network Ireland, *Sexual Violence Against People with Disabilities: Data Collection and Barriers to Disclosure* (October, 2011) p.48.

⁵⁶ McGee et al. (2002) *Sexual abuse and violence in Ireland* (SAVI Report) (Dublin: Liffey Press) p. 244.

⁵⁷ National Crime Council and ESRI, *Domestic Abuse of Women and Men in Ireland: Report on the National Study on Domestic Abuse* (July 2005) p. 172.

In line with the Council of Europe's Action Plan 2006-2013 (Action line No. 13), Ireland is also committed to developing a **National Action Plan** designed to protect persons with disabilities from abuse and to ensure access to services and supports for victims.

There are currently **two Bills** before the Houses of the *Oireachtas* for debate which are designed to further protect children from abuse in Ireland. The **Child Sex Offenders (Information And Monitoring) Bill 2012** aims to provide for the establishment of a scheme to allow the parents or guardians of a child or vulnerable adult to make an enquiry to the Garda Síochána for the purpose of ascertaining whether a person with whom their child is in contact has been convicted of a sexual offence or is otherwise likely to pose a serious danger to children; to allow schools or clubs to make enquires to safeguard children in their care; to modernise the monitoring of sex offenders; to amend the Sex Offenders Act 2001; and to provide for related matters. In addition, the **National Vetting Bureau (Children and Vulnerable Persons) Bill 2012** aims to provide for the protection of children and vulnerable persons and, for that purpose, to provide for the establishment and maintenance of a National Vetting Bureau (Children and Vulnerable Persons) Database System; to provide for the establishment of procedures that are to apply in respect of persons who wish to undertake certain work or activities relating to children or vulnerable persons or to provide certain services to children or vulnerable persons.⁵⁸ It is important to note that these bills are not yet the law of Ireland.

3.2.3. Children as vulnerable suspects

In Ireland, the main legislation governing children in conflict with the law or vulnerable suspects is the Children Act 2001.⁵⁹ This Act focuses on preventing criminal behaviour, diversion from the criminal justice system and rehabilitation and in general applies equally to children and children with disabilities. Whilst it does not have detailed provisions on the treatment of vulnerable suspects, it does require that members of the *Garda Síochána* (the national police) act with due **respect for the special needs of child suspects who may be under a physical or mental disability**.

The **age of criminal responsibility** in Ireland is **12 years of age**.⁶⁰ This means that children who have not reached the age of 12 years cannot be charged with an offence. There is an exception, however, for children aged 10 or 11 who can be charged with murder, manslaughter, rape or aggravated sexual assault. In addition, where a child under 14 years of age is charged with an offence, no further proceedings can be taken without the consent of the Director of Public Prosecutions. In any cases, proceedings taken against a child must be held in camera, which means they are not open to the public and the identity of the child cannot be reported in the media.

Although children under 12 years of cannot be charged and convicted of a criminal offence, this does not mean that they escape the rigours of the law. Section 53 of the Act places an onus on the *Gardai* to take **a child under 12 years of age** to his/her parents or guardian, where they have reasonable grounds for believing that the child has committed an offence. Where this is not possible the *Gardai* will arrange for the child to be **taken into the custody of the Health Service Executive** for the area in which the child normally

⁵⁸ See Houses of the Oireachtas (National Parliament) website available at <http://www.oireachtas.ie/parliament/> (last accessed on 20 February 2013).

⁵⁹ Children Act 2001 as amended by the Criminal Justice Act 2006.

⁶⁰ Section 52 of the Children Act 2001 as amended by Section 129 of the Criminal Justice Act 2006.

resides. It is possible that children under 12 years of age who commit criminal offences will be dealt with by the HSE and not the criminal justice system.

Hayes and O'Reilly carried out a study comparing young offenders with a 'mental health' group and a control group¹, involving a study of 80 young people. Hayes and O'Reilly have found that approximately **one fifth of juvenile offenders** in detention in Ireland can be expected to have **IQ scores in the intellectual disability range**.⁶¹

Ireland has a **diversion system** in place which aims to avoid children in conflict with the law entering the formal justice system administered through the *Garda Siochana*. However, in some circumstances and for certain offences, diversion will not be appropriate. In such cases, the Children's Court will deal with the matter.

Where a child is found guilty of an offence or during the investigation and trial of the offence, the child may be held in detention. The use of detention for a child is to be a last resort and, as far as practicable, any child detained in a police station must not be detained with an adult and must not be kept in a cell unless no other accommodation is available. Otherwise, **detention occurs through Children detention schools** which provide places for a child to be detained in custody in relation to criminal charges. Before sending a child to detention, the Court will try to make sure that no other option is available that would address the offences with which the child is charged. The principal objective of the schools under the Children Act 2001 is to provide care, education, training and other programmes with a view to reintegrating the child into society.

In the past, the main place of detention has been St. Patrick's Institution, which was formally known as Borstal and took male offenders between the ages of 16 and 21 years. Recently, a damning report was issued by the Inspectorate of Prisons in Ireland describing the **horrific conditions to which some children detained in St Pats** were subjected.⁶²

If a child is arrested, the 1987 Custody Regulations⁶³ apply. These regulations provide for certain rights for the person detained including consultation with **a solicitor**, interviews and information for arrested persons. The Custody regulations provide that a person under the age of 18 years of age must not be questioned in relation to an offence or asked to make a written statement unless **a parent, spouse or guardian** is present.

If a child is suspected or known to be 'mentally disabled', the responsible adult must, where practicable, be a **person who has experience in dealing with psychosocial difficulties**.⁶⁴ At the stage of arrest of a person with a psychosocial disability, it is required that a member of the *Garda Siochana* addresses such issues as '(1) whether the nature of the apparent disorder is so serious to warrant taking the individual into custody; (2) whether the nature of the offence and the surrounding circumstances are not so serious as to warrant charging; (3) whether there exists in the community the necessary facilities for

⁶¹ Hayes, J. M. and O'Reilly, G. (2007) *Emotional Intelligence, Mental Health and Juvenile Delinquency*, Cork, Juvenile Health Matters.

⁶² Office of the Inspector of Prisons, Report on an Inspection of St. Patrick's Institution by the Inspector of Prisons by Judge Michael Reilly, 26 June 2012, available at <http://www.inspectorofprisons.gov.ie/en/IOP/Appendix%20A%2005.10.pdf/Files/Appendix%20A%2005.10.pdf> (last accessed on 20 February 2013).

⁶³ Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Siochana Stations) Regulations 1987, S.I. no. 119 OF 1987.

⁶⁴ Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Siochana Stations) Regulations 1987, S.I. no. 119 OF 1987, Reg. 22(2).

dealing with the individual; (4) whether the impact of the arrest and charging on the accused and his family would be excessive having regard to the harm done'.⁶⁵

It has been acknowledged that the 1987 Regulations 'provide for the presence of the support person but do not set out the qualifications of or role of such a person. If the support person is to play any meaningful part in the process, the powers and duties of the support person should also be outlined in a statutory instrument'.⁶⁶

3.2.4. Inclusive education

Article 42 of the Irish Constitution provides that the State should provide for free primary education (up until the age of 18 years of age). There are **three main types of education** provision in Ireland which are available to primary and post-primary pupils with special educational needs. These include:

- A **mainstream** class – this is where a child is educated in a mainstream classroom with additional teaching supports if required.
- A **special class in a mainstream school**– these classes have a lower teacher-student ratio so the teacher can dedicate more time and attention to the individual students
- A **special school**.

There is also an option to **home school** the child, but this must be approved by the National Educational Welfare Board so they can place the child on their register. The child must be assessed by an authorised person (such as a school inspector or an educational welfare officer) to ensure that the child is receiving a minimum education.

Inclusive education in Ireland is defined as 'encouraging each child to take part in the everyday activity of the school, and helping every child to reach their full potential. Inclusive education means ensuring that the system adjusts to meet children's needs, rather than expecting children to 'fit' into the system.⁶⁷

The Education Act 1998-2012 requires that schools use their available resources to ensure the educational needs of all pupils, including those with disabilities. However, the qualifications in the Act threaten to severely limit this right by making references to 'as far as practicable' and 'having regard to available resources'.⁶⁸ Significantly, the latter defences apply to both the relevant Minister as well as the legislation.

Expulsions and Suspensions

Under section 29 of the Education Act 1998, an appeal concerning the permanent expulsion, suspension or refusal to enrol a student in the school may be made to the Secretary General of the Department of Education & Skills in respect of a decision by a board of management or a person acting on behalf of a board of management.

⁶⁵ O'Neill A-M, *Irish Mental Health Law* (Dublin: First Law. 2005) p. 427.

⁶⁶ O'Neill A-M, *Irish Mental Health Law* (Dublin: First Law. 2005) p. 427.

⁶⁷ National Council for Special Education, *Children with Special Educational Needs* (September 2001) p.12.

⁶⁸ Kilkelly U., *Barriers to the Realisation of Children's Rights in Ireland* (Office of the Ombudsman for Children, August 2007).

Measures towards quality of life/reduction in violence

In recent weeks, the issue of **bullying** in Irish Schools, particularly **cyber-bullying** through social media has received much media attention. This has been as a result of the deaths by suicide of two young teenage girls from different parts of the country. Currently in Ireland, the only measures which have been designed to address bullying date back to 1993 Guidelines on countering bullying behaviour in primary and post-primary schools from the Department of Education. These are not on a legislative level and it is unclear the extent to which they are being enforced across the country. Moreover, there are no consequences for non-compliance with the guidelines.

Research conducted by the Health Promotion Research Centre conducted in 2006, found that compared to other children, children with a disability and or chronic illness (as well as immigrant children) are more likely to report that they are bullied at school.⁶⁹

Inclusive education and reasonable accommodation

More recently, the EPSEN Act 2004 provides a detailed framework for making adequate provision for children with disabilities in education up to the age of 18 years. This legislation was brought in relatively soon after the Supreme Court decision of Sinnott, wherein the Court stated that the State is only obliged to provide for the right to free education up until the age of 18 years. According to the Supreme Court, education is age-related not needs-related, a principle which it is argued, is clearly contrary to international law and best practice.

EPSEN was passed to ensure that children with special educational needs can be educated in an inclusive environment and that they have the same right to education as people without disabilities. Under the Act, **all children with special educational needs must be educated in an inclusive environment** unless it would not be in their best interests to do so. The Act has established a National Council for Special Education and an Appeals body to deal with appeals from schools, schools principals and health boards.

The Act thus makes provision, where appropriate, for children and young people up to the age of 18 years of age, for an assessment of educational needs, the development of an individualised education plan (IEP)⁷⁰ (as opposed to the general education plan for all students upon entry) designed to meet those needs, and an independent appeals process. The individual education plan sets out the learning goals that are to be achieved by the student over a period of time in accordance with the plan.

The Assessment Process

Upon being notified by the parents of the student in school, or having otherwise formed the opinion, that the student is not benefiting from the plan to the extent anticipated, the **school principal has a responsibility to take such measures as are practicable to meet the educational needs of the student** in question. Upon taking the latter measures, if the principal is of the opinion that the student is still not benefiting and

⁶⁹ Office of the Minister for Children, *State of the Nation's Children – Ireland 2010* (Dublin: Office of the Minister for Children, 2010) p. 57.

⁷⁰ The Individual Education plan details the teaching pedagogies, resources and supports that will be necessary to achieve these goals each year.

following consultation with the parents of the student concerned, he or she should arrange for an assessment to be carried.

Under section 2 of the Disability Act 2005, there is provision for phased implementation of the Independent Assessment of Need (IAN) for children with disabilities between 5 and 18 years of age. IAN is currently only being implemented for children in the 0-5 year age group. This is because the other sections of the act applying to children over the age of 5 years have **not been implemented due to lack of resources**.

This assessment is holistic in nature and in essence is an assessment of the full range of a child or young person's needs associated with his or her disability. Thus, it covers health, personal supports, as well as educational supports concurrently. This process has not yet begun and will not, until the relevant provisions relating to children between 5-18 years under EPSEN have been commenced. However, it is unlikely that these provisions will be commenced in the near future due to lack of resources in times of economic crisis. That said, non-statutory provision of some of these services has been undertaken by the Department of Health and Children and the Department of Education and Skills until such time as the legislation has been commenced.

Problems in the implementation

As already mentioned, significantly, the EPSEN Act 2004 has **not yet been fully implemented due to the current economic circumstances** in Ireland. The sections of the Act which have not yet been implemented include those which give statutory rights to children with special educational needs in relation to assessment, individual education plans and the right to make appeals. In primary and post-primary schools, children with special educational needs arising from the disability may be given access to a Special Needs Assistant (SNA).⁷¹

As highlighted by Glendenning, '[t]hese rights need to be given priority in recessionary times [...]. It appears futile to draft a piece of legislation to support children, who have a constitutional entitlement to free primary education and to a minimum education, if many of its main provisions are not commenced almost a decade after its enactment'.⁷² Moreover, it is clear that when Ireland ratifies the CRPD, they will be obliged to commence these sections in order to satisfy international legal commitments.

The situation in respect of children with disabilities is one that is frequently highlighted through media **reports of parents taking legal proceedings on behalf of their child against the State for failing to provide the child's right to education**. In fact, while this has proved successful for some after many years going through the courts, these cases enjoy limited success in practice and are very costly. Meanwhile, the delay in taking these cases means that the children suffer as a result.

Reasonable Accommodation

Beyond the above mentioned requirements for **reasonable accommodation**, in the case of a child with a specific learning disability, he or she may be eligible for an exemption from some of the general educational requirements. For example, if a child has dyslexia he or she may be exempt from the requirement to learn Irish. Furthermore, he or she may also

⁷¹ SNAs are appointed to schools through the National Council for Special Education. They can help with activities such as clothing, feeding and mobility. They do not teach or provide educational support.

⁷² Glendenning D., *Education and the Law* (Dublin: Bloomsbury, 2012) pp. 264-265.

be granted spelling and grammar waivers in language subjects in state examinations. Indeed, depending on the nature of the child's disability, he or she may be exempt from part of some exams in Junior and Leaving Certificate subjects. For example, if a child has a hearing impairment, he or she may be exempt from the oral component of an exam.

Reasonable accommodation is available to students with disabilities at examination time, which generally takes the form of extra rest breaks, large-print exam papers and the services of a reader or a scribe.

In situations where a child has a physical disability, the school may apply for a grant to make the premises accessible by, for example, putting in ramps or accessible toilet accommodation. There are also special transport arrangements, including escorts and safety harnesses, for children with disabilities attending school.

National Council for Special Education

The National Council for Special Education was established in 2003 and its vision is for a society where children and adults with special educational needs receive an education that enables them to reach their full potential.⁷³

In 2012, the NCSE announced that a major strategic review of special educational supports in schools had been underway since earlier in the year at the request of the Minister for Education and Skills.

Evidence indicates that the demand for supports and special needs assistance (SNA) in general has increased significantly. Yet the 2012/13 NCSE allocations of Resource Teaching and SNA posts to schools indicate broadly the same numbers of SNAs in 2012/13 as for 2011. This represents 3,700 schools which have been allocated additional teaching and SNA posts to enable them to provide specific support to up to 50,000 students with special educational needs.

In 2011, 15% (€1.3billion) of the Education Budget was spent on supporting special needs education in Ireland. The budget allocations for 2012 have remained roughly the same but have not kept pace with increasing demand for these services.⁷⁴ This is clearly reflective of the economic situation that Ireland is currently facing.

Currently the NCSE service is outside the remit of the Ombudsman for Children's office but every effort is being made to change this. Indeed, the Ombudsman has written to the relevant Minister requesting that the NCSE be brought within her remit as soon as possible.

3.2.5. Other particular issues faced by children with disabilities in Ireland

It has been recognised that 'Public attitudes to people with disabilities can be a key facilitator or a serious barrier to their inclusion and participation in society'.⁷⁵ In June 2011, the National Disability Authority commissioned Social Market Research to carry out a national survey on **public attitudes** to disability in a range of areas including education,

⁷³ The functions of this body are set out under section 20 of the Education for Persons with Special Educational Needs Act 2004.

⁷⁴ Disability Federation of Ireland, 'Examples of Cuts for People with Disabilities since 2008', available at <http://www.disability-federation.ie/userfiles/file/Impact%20of%20Cuts%20Fact%20Sheet.pdf> (last accessed on 20 February 2013).

⁷⁵ National Disability Authority, *A National Survey of Public Attitudes to Disability in Ireland* (October, 2011) p.4.

employment, relationships, etc., in Ireland. In general, the findings showed that where someone knows a person with disability that they are more likely to have a positive attitude to disability. Indeed, the report concluded that the latter consistent finding highlights the importance of promoting and enabling active participation of people with disabilities in the mainstream community and access to mainstream services.⁷⁶

The results of the report in general were quite disappointing in that the 2011 study, demonstrated 'a hardening of attitudes across all types of impairments, and of particular concern are the less positive attitudes towards children with disabilities in mainstream education'.⁷⁷ There was also a negative attitude towards intellectual or psychosocial disabilities in comparison to studies carried out in 2001 and 2006. There is a lack of awareness in Irish Society concerning the rights of children with disabilities which contributes to the paternalistic attitude with which people view children and adults with disabilities today. There is a specific need for rights awareness-raising campaigns which would help contribute to attitudinal change towards disability in Ireland today.

Currently **children with autism** in Ireland fall between supports offered for individuals with intellectual disabilities and those with mental health difficulties and so these children do not necessarily have their needs met within the current system. Furthermore, these children are undocumented in that there are no statistics available on this group of people.

Geographically, current services for children with disabilities can vary from robust, comprehensive and integrative to isolated, patchy and ineffective. Thus, the quality of a service, whatever its nature, depends on where the child is based. Furthermore, there is a huge issue in Ireland concerning children with intellectual disabilities and achieving a smooth transition from children's to adult services.

Mental health service users tend to have low visibility due to the nature of mental health difficulties and the traditional stigma of mental illness in Ireland. A Vision For Change (AVFC) is a modern national policy framework for protecting persons with intellectual or psychosocial disabilities in Ireland. It was adopted by the Government in 2006 but the implementation process has been slow to date. The successful implementation will require a paradigm shift in how mental health is understood and how services are provided.⁷⁸ According to the NGO, Mental Health Reform, in Ireland⁷⁹ '[t]here are some general features of the current mental health system in Ireland that are likely to affect a significant number of those with mental health difficulty:

- An approach to mental health support that, in practice, **focuses almost exclusively on a medical services model and fails adequately to recognise the role of social and economic supports for individuals** (housing, employment, etc.) in supporting and maintaining recovery.
- Limited access to anything other than medication-based treatment for those whose mental health (e.g. clinical psychology / talking therapy services) [is affected].
- **Over-reliance on in-patient rather than community-based care**, with a high level of readmission, indicating lack of treatment efficacy.

⁷⁶ National Disability Authority, *A National Survey of Public Attitudes to Disability in Ireland* (October, 2011) p.7.

⁷⁷ National Disability Authority, *A National Survey of Public Attitudes to Disability in Ireland* (October, 2011) p.4.

⁷⁸ Mental Health Reform, 'Promoting Improved Mental Health Services in Ireland', see www.mentalhealthreform.ie (last accessed 20 February 2013).

⁷⁹ See Mental Health Reform website available at <http://www.mentalhealthreform.ie/> (last accessed on 19 November 2012).

- An inconsistent level of mental health support coverage across Ireland.
- A lack of specialist mental health services (e.g. for children and adolescents, older people or people with intellectual disability).
- Few resources directed towards mental health promotion / wellbeing and early intervention programmes that can reduce incidence of mental health difficulties.
- A general population whose attitudes and misconceptions mean that many people with mental health difficulties experience stigma isolation and discrimination.
- A growing service user movement, beginning to challenge the dominant paradigm of 'psychiatric care'.

With respect to people with disabilities within the **community of Travellers**, according to the study 'A Social Portrait of Communities in Ireland', the Traveller's health is lower than that of the rest of the population. The study cites data from the Population Census on disability of Travellers that shows how the disability rates for Travellers are higher when compared to the general population: 4.8% of those aged 0-14 (7.7 % of those aged 15-24) reporting a disability amongst the Travellers' community versus 3.8% (4.6% of those aged 15-24) for the general population.

However, the Traveller Health Advisory Committee and the Health Service Executive have worked together to identify a list of actions which focused on provision of service for the community of Travellers. Mental health was considered one of the priority areas for attention.⁸⁰

In the context of integration, the Department of Education and Skills published its Intercultural Education Strategy in 2010. One of the aims of this Strategy is to assist in the creation of a learning environment where inclusion and integration within an intercultural learning environment is seen as the norm. In Fact, historically, many Roma or Traveller children and children with special needs were educated in segregated settings.⁸¹ For what concerns Roma children, although Roma only schools or schools with an exclusive Roma specific curriculum do not officially exist, however, unofficially there are schools where all the pupils are Roma children. Furthermore, Roma children who attend mainstream education are often channelled into classes (within schools) for children with intellectual disabilities.⁸²

Finally, Ireland is currently in the process of trying to implement capacity legislation to govern the rights of persons with psychosocial disabilities. It is anticipated that once this is in force, that the State will finally be in a position to ratify the UN CRPD.

⁸⁰ Ireland's National Traveller / Roma Integration Strategy available at <http://www.justice.ie/ga/JELR/Ireland%E2%80%99s%20National%20Traveller%20Roma%20Integration%20Strategy%202011.pdf/Files/Ireland%E2%80%99s%20National%20Traveller%20Roma%20Integration%20Strategy%202011.pdf> (last accessed on 08 October 2012).

⁸¹ *ibid.*

⁸²L. Lesovitch, Roma Educational Needs in Ireland Context and Challenges available at http://www.paveepoint.ie/pdf/Roma_Report.pdf (last accessed on 08 October 2012).

4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

KEY FINDINGS

- The implementation of the legal framework is poor, particularly since it is not specifically focused on the rights of children with disabilities and any legislative provision is more or less wholly dependent on available State resources, which are scarce in times of recession. Moreover, the enforcement mechanisms are designed for adults not children.
- Irish literature recommends: 1. Specific rights based legal and policy framework for children with disabilities 2. Need for more awareness raising campaigns; 3. Ratification of the CRPD.

4.1. Enforcement and reporting mechanisms

The general **Office of the Ombudsman**⁸³ was established under the Ombudsman Act 1980. The Ombudsman has the authority **to independently examine complaints** which pertain to everyday administrative activities which are carried out by public bodies. More specifically in the context of disability, the Ombudsman has the power to examine complaints about access to public buildings, services and information in general.

The Disability Act 2005 gives the Ombudsman new powers to investigate complaints about compliance by public bodies with Part 3. It is important to note that the Ombudsman has no role whatsoever concerning the other Parts of the Disability Act 2005 such as the assessment of needs process (Part 2) or public service employment (Part 5). The Disability Act contains separate directions on how to manage these complaints.

The **Equality Authority** is an independent body which was initially set up under the Employment Equality Act 1998. The Employment Equality Act, 1998 and the Equal Status Act, 2000 outlaw discrimination in employment, vocational training, advertising, collective agreements, the provision of goods and services and other opportunities to which the public generally have access on nine distinct grounds one of which is disability.⁸⁴

Indeed, the Equality Authority has a number of distinct roles including the provision of information on the operation of the anti-discrimination legislation as well as the provision of an in-house legal service providing free legal assistance to those making complaints of discrimination under the Employment Equality Act 1998 and the Equal Status Act 2000.⁸⁵ The Equality Authority is also empowered to support the development of a pro-active

⁸³ See Office of the Ombudsman website available at <http://www.ombudsman.gov.ie/en/> (last accessed on 19 November 2012).

⁸⁴ The Equality Authority website available at <http://www.equality.ie/en/> (last accessed on 19 November 2012). The nine grounds are gender; civil status; family status; age; disability; race; sexual orientation; religious belief; and membership of the Traveller Community.

⁸⁵ The Equality Authority has stated that it is not possible to provide legal assistance for all those who request it. It provides such assistance only in a small percentage of cases according to the criteria that have been set down by the Board of the Equality Authority.

approach to equal opportunities in the workplace and in the provision of goods, facilities and services.

The **Equality Tribunal**⁸⁶ is an independent quasi-judicial body which is responsible under equality legislation for investigating complaints of discrimination in both employment as well as the provision of goods and services. Once the Equality Officer issues a written Decision upholding or rejecting the complaint, this Decision is legally binding. If either side is unhappy with the outcome of an Equality Officer's Decision, they may lodge an appeal with the Circuit Court for a fresh hearing of the case. According to the Legal Review 2010, there have been a number of cases taken by parents of children with disabilities particularly in the area of education with claims that reasonable accommodation has not been made for these children.

A **National Advocacy Service** (NAS) for Persons with Disabilities was launched in March 2011 on a pilot basis for a five-year period. This service provides independent representative advocacy services for vulnerable persons with disabilities. It is managed by the Citizen Information Centres throughout the country with 46 offices in total nationwide. The individuals who are trained to provide this service will bring positive change for persons with disabilities, through representing and assisting people in terms of claims for social welfare, housing and improved living conditions in general. The latter involves making applications for funding and grants for example.⁸⁷

The **Ombudsman for Children** in Ireland is a statutory office established under the Ombudsman for Children Act 2002. The main functions of the Office are: the rights and welfare of children; to **investigate complaints made by children or on behalf of children against public bodies, schools and hospitals**; to deal with complaints independently; to inform children about their rights and to promote child participation in matters affecting them. The Ombudsman for Children's Office⁸⁸ (OCO) aims to ensure that the Irish government as well as other people who make decisions about young people take into account the best interests of children and young people in Ireland.

The Ombudsman for Children can initiate her own investigations or launch an investigation as a result of a complaint by a child, a family member or a professional who deals with the child. Before taking a complaint to the Ombudsman for Children, it is important that all relevant complaints and appeals mechanisms (which are attached to the institution against which the complaint is being made) have been exhausted first.

In 2011, the Ombudsman for children received a total of 1,393 complaints, 47 % of this total related to education and 32 % to health. Of the complaints related to education, 12% concerned issues with special needs resources and 14% with bullying.⁸⁹

In 2000, The Irish Human Rights Commission (IHRC)⁹⁰ was established under statute to promote and **protect the human rights of everyone in Ireland including children with disabilities**. The IHRC is required to promote and protect the rights, liberties and

⁸⁶ The Equality Tribunal website available at <http://www.equalitytribunal.ie/> (last accessed on 19 November 2012).

⁸⁷ Citizens Information Board, Information on Housing, available at http://citizensinformationboard.ie/publications/providers/booklets/entitlements_for_children_with_disabilities/entitlements_for_children_with_disabilities12.html (last accessed on 20 February 2013).

⁸⁸ Ombudsman for Children website available at <http://www.oco.ie/> (last accessed on 19 November 2012).

⁸⁹ Ombudsman for Children Annual report 2011, available at http://www.oco.ie/assets/files/11297_OCO_AR_int_2011_195x260_web.pdf (last accessed on 19 November 2012).

⁹⁰ Irish Human Rights Commission website available at <http://www.ihrc.ie/> (last accessed on 19 November 2012).

freedoms guaranteed under the Irish Constitution as well as under international agreements, treaties and conventions to which Ireland is a party.

4.2. Gaps, problems and issues in the implementation

In reality, as is the case with all children in Ireland, **children with disabilities are largely dependent on adults to assert their rights in practice**. This is for a variety of reasons. For example, children do not have access to the same level of information and support as adults in order to litigate their rights. Service provision is generally aimed at adults and so not necessarily easily accessible for children with disabilities or child-friendly. There is no such thing as separate legal representation for children in Ireland. Moreover, from a practical point of view, children do not have the same level of access to finance. Ultimately, children with disabilities depend on adults to act on their behalf, whether through their parents or the State.

In Ireland, a Ward of Court system exists and operates under the Lunacy Act of 1871. This system is utilised in cases where children with disabilities are concerned. A ward of court is a person, especially a child or someone legally incapable of managing their own affairs, placed under the control or protection of a guardian or of a Court. When a child is made a ward of Court all matters affecting the ward's up-bringing become the responsibility of the Court. The Court determines matters such as the child's residence, education, maintenance, holidays, etc. A third party can seek custody of a child against a parent, or seek to obtain protection for a child against the actions of a parent, by bringing wardship proceedings. The High Court handles wardship applications – where an application is made to make a child or a person of unsound mind a ward of court. The Court then looks after their affairs. In certain cases, the Circuit Court can make someone a ward of court.

There is a new Mental Capacity Bill currently before the Houses of Oireachtas. The General Scheme of the Bill is intended to address the situation of people whose ability to make legal decisions is limited by mental illness or intellectual disability and to abolish the old Ward of Court system.

Moreover, any legislation which is in place which provides for the rights of children with disabilities is dependent on the provision of State resources which are scarce in times of recession. Indeed, some sections of legislation in the area of Education, for example, the Education for Persons with Special Educational Needs Act 2004 and the Disability Act 2005 have not yet been commenced or have been out on ice since 2009 for this very reason. As mentioned above, there have been **major cutbacks in terms of the funding** allocated for service provision in Ireland and it seems that this is due to be cut further as part of Budget 2012.

There is no disability legislation which embraces all the rights to which children with disabilities should be entitled. Moreover, it is suggested that there should be a Disability Policy in Ireland which is child-specific. Given that children are a particularly vulnerable group in Irish society, it is imperative that there is higher visibility afforded their rights and needs and more State accountability in the event that those needs are not met or those rights are violated.

4.3. Best practices

In Ireland, disability rights organisations and persons with disabilities themselves are a powerful force behind driving legal and policy reform in Ireland. There have been a number of reports which have been commissioned by Government which are aimed at finding ways of improving the Irish Legal system and making it more accessible to persons with disabilities. There has been a move away from the paternalistic approach towards persons with disabilities **towards a more rights-based approach**, recognising both adults and children with disabilities as subjects of law rather than objects of charity, thus paving the way for ratification of the CRPD.

In response to a proposal by the National Federation of Voluntary Bodies to mark the European Year of People with Disabilities 2003, the Health Services National Partnership Forum agreed to provide funding for a project which would make a real difference to people with disabilities in Ireland and particularly to their families. The central aim of the **Informing Families Project** was therefore to develop evidence based national best practice guidelines, education and training on appropriate procedures to inform families of their child's disability when communicating a diagnosis or concern. "Informing Parents of their Child's Disability: National Best Practice Guidelines" (2007) is an excellent set of national standards which is relevant for all families who have a child with a disability.⁹¹

4.4. Data and monitoring mechanisms

According to The State of the Nation's Children Report – Ireland 2010, in 2006, there were 42,021 children with a disability in Ireland. This accounted for **4.1% of the total child population of Ireland**. Almost **two thirds of these children were boys**.⁹²

The National Disability Strategy Stakeholder Monitoring Group was established to monitor the progress made on the implementation of the National Disability Strategy.⁹³ This group's role covers various aspects of justice, health, education and employment as these sectors pertain to persons with disabilities. Ultimately, this provides an important forum where issues can be raised and discussed between all parties with involvement in the NDS.

The NDS builds on existing policy and legislation pertaining to persons with disabilities in general and aims to create a comprehensive strategy to underpin the participation of persons with disabilities in Ireland. It includes the policy of mainstreaming public services and universal design to facilitate accessibility. While there is no specific strategy designed for children with disabilities, the existing NDS encapsulates children with disabilities. Furthermore, relevant policies concerning child protection and children's rights in Ireland are also applicable to children with disabilities.

The Health Research Board is responsible for two databases in respect of disability – the National Intellectual disability Database and the Physical and Sensory Disability Database.

⁹¹ National Federation of Disability Bodies, [National Best Practice Guidelines for Informing Families of their Child's Disability](#) (December 2007).

⁹² Office of the Minister for Children, *State of the Nation's Children – Ireland 2010* (Ireland, OMC, 2010) p. 32. According to the National Disability Survey 2006, there were **393,800 persons with disabilities in Ireland, 35,900 of which were within the 0-17 year's age group**. National Disability Authority, *National Disability Survey 2006*.

⁹³ This group meets twice yearly to examine progress made in implementing the NDS and it issues a report to this effect. The reports are submitted to the Cabinet Committee on Social Inclusion and to the Implementation Steering Group under the Social Partnership Agreement.

These sources of statistical information help to inform decision-making in terms of the planning of specialised health and personal social services for persons with disabilities.

Over the period 2005-2009, the number of children under 18 years of age registered as having an **intellectual disability** increased consistently. However, this number fell slightly in 2009.⁹⁴ Approximately 6 in 10 children registered as having an intellectual disability are boys.⁹⁵ In 2009, there were 8,028 children registered as having an intellectual disability. This equates to an overall rate of 72.5 per 10,000. 62.9% of children registered as having intellectual disability were boys and 37.1% were girls. 14.4% of children registered as having an intellectual disability were aged 0-4 years of age; 30.2% were aged between 5-9 years; 34% were aged between 10-14 years and the remaining 21.3% were aged 15-17 years of age.⁹⁶ The majority of these children were registered as having a mild or moderate disability.

Approximately 1 in 4 children on the National Physical and Sensory Database are registered as having multiple disabilities. In 2009, there were 8,043 children under 18 years of age registered as having a **physical and or sensory disability**. This equates to 72.7 children per 10,000. 6.3% of children registered as having a physical and/or sensory disability were aged 0-4 years; 33.6% were aged 5-9 years; 42.1% were aged 10-14 years; and the remaining 18% were aged 15-17 years.⁹⁷ 62.5% of children registered as having a physical and or sensory disability were boys and 37.5% were girls. The majority of children were registered as having either a physical disability or a speech and language disability, while 28.2% of children were registered as having multiple disabilities. Over the period 2005-2009, the number of children under the age of 18 years as having a physical and or sensory disability increased significantly. However, this fell slightly in 2009.⁹⁸

Over the period 2004 – 2008, the number of admissions to **psychiatric** hospitals among children ranged from 333 in 2005 to 406 in 2008.⁹⁹ In 2008, there were 406 admissions to psychiatric hospitals among children. This equates to an overall rate of 37.4 per 100,000. 84% of these children were aged between 15-17 years of age. 41.9% were boys and 58.1% were girls. The most common reason for children being admitted to these hospitals was for neuroses, followed by depressive disorders as well as personality disorders and other psychoses.

According to the Census of population 2006, the overall rate of disability amongst traveller children was higher than children in the general population.¹⁰⁰ For example, for traveller children in the 0-14 year's age group, 4.8% had a disability as opposed to 3.8% of children in the general population.¹⁰¹

The **Central Statistics Office** (CSO) is the National Statutory Body with responsibility for data collection, compilation, extraction and dissemination of data concerning economic, social and cultural information in Ireland.¹⁰² In the context of Disability, the most relevant surveys conducted by the CSO include:

⁹⁴Office of the Minister for Children, *State of the Nation's Children – Ireland 2010* (Ireland, OMC, 2010) p. 101.

⁹⁵ Office of the Minister for Children, *State of the Nation's Children – Ireland 2010* (Ireland, OMC, 2010) p. 101.

⁹⁶ Office of the Minister for Children, *State of the Nation's Children – Ireland 2010* (Ireland, OMC, 2010) p.101.

⁹⁷ Office of the Minister for Children, *State of the Nation's Children – Ireland 2010* (Ireland, OMC, 2010) p. 105.

⁹⁸ Office of the Minister for Children, *State of the Nation's Children – Ireland 2010* (Ireland, OMC, 2010) p. 105.

⁹⁹ Office of the Minister for Children, *State of the Nation's Children – Ireland 2010* (Ireland, OMC, 2010) p. 195.

¹⁰⁰ Census of Population 2006. See Nolan B. and Maitre. B., *A Social Portrait of Communities in Ireland* (Dublin: Social Inclusion, November, 2008) p.66.

¹⁰¹ Census of Population 2006. See Nolan B. and Maitre. B., *A Social Portrait of Communities in Ireland* (Dublin: Social Inclusion, November, 2008) p.66.

¹⁰² Central Statistics Office website available at www.cso.ie (last accessed on 20 February 2013).

- The National Disability Survey;
- Census of the Population;
- Quarterly National Household Survey;
- Annual Survey on Income and Living Conditions.

The **National Disability Authority** (NDA) has a statutory remit to undertake commission or collaborate in disability research and to contribute to the development of statutory information.

4.5. Recommendations given by the literature

The UN Committee on the Rights of the Child has specifically recommended that Ireland **adopt a legal and policy framework which specifically reflects the rights of children with disabilities and caters for their specific needs**.¹⁰³ In its submission to the Universal Periodic Review of Ireland in October 2011, the Centre for Disability Law and Policy based in Galway made a number of recommendations concerning the rights of persons with disabilities. More specifically, in the context of children with disabilities, the report acknowledged that 'children with disabilities in Ireland face a range of barriers accessing mainstream education including recent budget cuts reducing special needs supports'.¹⁰⁴ This report also highlighted the **need for Ireland to introduce capacity legislation** which recognises and establishes a framework for supported decision-making as well as to ratify the CRPD as soon as possible.¹⁰⁵

Further recommendations concerning the reform of laws and policies governing the rights of children with disabilities include:¹⁰⁶

- Holding a referendum on children's rights so that all children can be heard and have their rights protected under Irish Law;
- A regime of independent inspection and statutory standards for residential services for children with intellectual disabilities;
- A Strategy designed to inform children with disabilities on identifying dangerous situations / potentially abusive situations;
- The Disability Strategy to be implemented in full so that all children with disabilities have their needs assessed not just those from 0-5 years of age;
- Education supports should be evaluated to ensure that they are adhering to legislation standards in terms of providing children with disabilities with the same right to education as their peers in an inclusive environment.

¹⁰³ *Concluding Observations and Recommendations of the Committee: Ireland*; UN Doc: CRC/C/IRL/CO/2 at paras. 41-43, 29/09/2006.

¹⁰⁴ Centre for Disability Law and Policy, NUIG, Submission to the Universal Periodic Review of Ireland, Twelfth Session of the Working Group on UPR, Human Rights Council, 6th October 2011, at para.3.

¹⁰⁵ Centre for Disability Law and Policy, NUIG, Submission to the Universal Periodic Review of Ireland, Twelfth Session of the Working Group on UPR, Human Rights Council, 6th October 2011, at para.6.

¹⁰⁶ Euro child, *Children's Rights for All: Monitoring the Implementation of the UN Convention on the Rights of the Child for Children with Intellectual Disabilities – National Report of Ireland* (Euro child, December 2011) pp. 2-3.

Generally, it is clear that the overall application and implementation of Disability policy in Ireland leaves a lot to be desired. This is particularly obvious of late in areas such as assessment of health and education needs, the inspection of disability services and thorough implementation of the legislation that is currently there, all of which are dependent on State resources. While assessments are being carried out in Ireland in general, this is inconsistent and dependent on location.

Effects of the crisis

In terms of provision for children with psychosocial or intellectual disabilities in Ireland, Mental Health Reform has highlighted that **budgetary constraints** are causing huge challenges to improving the care and protection provided for persons with disabilities. It acknowledges that non-capital expenditure on mental health services was €770M in 2009, in comparison to 1.1 billion in 2008. Spending on mental health has dropped from 13% of the overall health budget in 1986 to 6.4% in 2009 and 5.3% in 2010. AVFC recommends that the rate reach 8.4%. This is still a low level compared to international standards: the equivalent rate is 12% in England and 18% in Scotland; other European countries allocate over 20% of their total health spend on mental health service and support. The 2010 staff moratorium has disproportionately impacted on the mental health services: mental health represents just 9% of the healthcare work force but accounted for 20% of the 1,500 posts lost through the moratorium.¹⁰⁷

According to the Disability Federation of Ireland in its pre-2012 Budget Submission, 'since 2008 people with disabilities have been suffering cumulative reductions in essential income and service supports'.¹⁰⁸ More specifically in relation to children with disabilities, it was noted that from June 2007 to April 2011, 2,461 'Independent Assessments of Need' reports had been completed for children under 5 years by the HSE. However 751 are currently overdue (i.e., another 31% had not been completed within the prescribed time limits).¹⁰⁹

It has been argued that the recession and the consequent austerity that has been imposed on the people of Ireland, has serious consequences for persons with disabilities. For example, many disability-specific services they need have been reduced, generally available or universal services, such as social housing, leisure and dental services, which disabled people also use, have been reduced significantly, Legislative entitlements in the Education for Persons with Special Educational Needs Act 2004, the Disability Act 2005 and the Citizens Information Act 2007 have been put on ice since the recession began. Huge cutbacks have been announced in capital funds for social housing appropriate to people with special needs and funds for housing adaptation grants have been reduced.

¹⁰⁷ See Mental Health Reform website available at www.mentalhealthreform.ie (last accessed on 20 February 2013).

¹⁰⁸ Disability Federation of Ireland, *2012 Pre-Budget Submission*, see Disability Federation of Ireland website available at www.disability-federation.ie (last accessed on 20 February 2013).

¹⁰⁹ *Ibid.*

5. CONCLUSIONS

Generally, the recognition afforded to and protection of the rights of children with disabilities in Ireland is at a relatively early stage. Indeed, traditionally the rights of children with disabilities have been subsumed into the protection afforded to the rights of adults with disabilities and to a large extent this is still the case. For example, the National Disability Strategy is directed at persons with disabilities in general.

The rights of children with disabilities are enshrined at constitutional level (although they are not specifically provided for) as well as at a legislative level. While there has been some reform, particularly in the field of education, there is so much further to go in terms of protecting the rights of children with disabilities are seen and heard in Ireland. Furthermore, a targeted policy for children with disabilities is needed.

On drafting this report, it has become abundantly clear that the information pertaining to the rights and services to which persons with disabilities are entitled is scattered over a variety of sources. There is a need for a one-stop-shop which provides clear and accessible information to all persons with disabilities and in particular, children with disabilities. There is a clear need for further data collection in respect of children with disabilities. While some of this information was included in the Census 2011 (which was released late October 2012), it is imperative that this information is collected regularly and systematically in one database, rather than a multitude of databases which is currently the case.

Since 2008, there have been serious cutbacks in budget allocations toward services for persons with disabilities.¹¹⁰ While this is representative of the very difficult economic times we find ourselves in, it is preferable that the most vulnerable in society are not the worst hit as a result. Yet there is clear evidence that in the areas of health and education, resource allocation for persons with disabilities has been hit hard. Moreover, there was public outcry in Ireland this year when the Government tried to reduce the allocations further, a plan they later had to rollback on.¹¹¹

The implementation of the assessment processes under the Disability Act 2005 and the EPSEN Act 2004 needs further attention.

Unfortunately, due to lack of resources, many children with disabilities have suffered in reality. For example, there is little or no support for children who need to transition to adult services. This is apparent in particular in the area of mental health law and policy.

While Ireland has moved some way towards improving the situation for children with disabilities, there are still a lot of improvements to be made particularly outside the field of education. As was evidenced by the recent report on public attitudes to disability in Ireland, the attitude of society as a whole towards disability in Ireland has become worse in recent

¹¹⁰ Disability Federation of Ireland, 'Examples of Cuts for People with Disabilities since 2008', available at www.disability-federation.ie/userfiles/file/Impact%20of%20Cuts%20Fact%20Sheet.pdf ; Inclusion Ireland, 'Cuts to People with Disabilities and those with Mental Health Needs are Unsustainable', available at www.inclusionireland.ie/content/media/933/cuts-people-disabilities-and-those-mental-health-needs-are-unsustainable, (last accessed on 20 February 2013).

¹¹¹ The Journal, 'People with Disabilities holding overnight protest against HSE cuts', available at <http://www.thejournal.ie/disability-protest-hse-cuts-leaders-alliance-584090-Sep2012/>; The Irish Times, 'Disability groups call for halt in cuts', available at <http://www.irishtimes.com/newspaper/breaking/2012/0917/breaking30.html> (last accessed on 20 February 2013).

years. Thus, it is clear that there needs to be further training, education and awareness-raising in society in general and a focus on universal access for all.

Ireland is one of the few remaining countries of the EU that has yet to ratify the CRPD. While some measures have been put in place to advance the process of ratification, it is imperative that we do so at the earliest opportunity so that we can measure our progress on both the political and legal front in terms of promoting the rights of children with disabilities.

The Mental Capacity legislation also needs to be made a political priority since this is one of the main legal reasons why Ireland has failed to ratify the CRPD to date. There is also a related need for rights-based mental health law for children. It is also recommended that the Children (First) Bill 2012 be enacted as soon as possible, thus placing the National Child Protection guidelines on a legislative footing.

It is further suggested that the Irish Government thinks about drafting a National Disability Strategy for Children with Disabilities specifically, particularly since the needs and interests of children with disabilities are separate and distinct from their adult counterparts. Perhaps a comprehensive law enshrining children with disabilities could be something that is addressed in due course. The need for a more cohesive and comprehensive approach towards children with disabilities in Ireland has been highlighted throughout this report so that the rights of this particularly vulnerable group in Irish Society can be protected to the extent that is required under international standards.

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ANNEX 1 – SUMMARY TABLE

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
Best interests of the child	
<p>Irish Constitution</p> <p>Article 41 – it is presumed that the best interests of the child are protected in the marital family.</p> <p>Article 42 A – Children The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.</p> <p>1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.</p> <p>2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.</p> <p>Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.</p> <p>1° Provision shall be made by law that in the resolution of all proceedings-</p> <p>i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or</p> <p>ii concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.</p> <p>2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.</p> <p>Child Care Act 1991, section 3 In the performance of its duties, the health boards must</p> <p>a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children in its area;</p> <p>(b) having regard to the rights and duties of parents, whether under the Constitution or otherwise—</p>	<p>Effective implementation</p> <p>The framework implements the principle of the best interests of the child effectively, mostly for what concerns family matters.</p> <p>Under Article 42 A the Irish State is under a commitment to draft legislation so that in adoption, child care cases, guardianship, custody and access, the best interests of the child shall be of paramount consideration. It remains to be seen how this will be implemented in practice given the newness of this provision.</p> <p>In cases concerning the safety and welfare of a child, where the state is deciding whether or not it should intervene, it must regard the welfare of the child of first and paramount consideration. It must be proved in all child care cases brought before the courts.</p> <p>In cases concerning guardianship,</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(i) regard the welfare of the child as the first and paramount consideration, and (ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child; and have regard to the principle that it is generally in the best interests of a child to be brought up in his own family.</p> <p>Guardianship of Infants Act 1964, 3.—Where in any proceedings before any court the custody, guardianship or upbringing of an infant, or the administration of any property belonging to or held on trust for an infant, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration.</p> <p>EPSEN Act 2004 2.—A child with special educational needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with— (a) the best interests of the child as determined in accordance with any assessment carried out under this Act, or</p>	<p>custody and access, the court must regard the welfare of the child as being of paramount consideration. This is also applied in practice.</p> <p>The ESPEN Act provision ultimately means that the rule should be that all children with special educational needs should be educated in an inclusive educational environment where possible unless it would not be in the best interests of the child. This responsibility is largely that of the School in which a child is enrolled and is decided on a case-by-case basis.</p>
Non-discrimination	
<p>Irish Constitution, Article 40 1. All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.</p> <p>Equal Status Acts 2000-2004 Section 3 3.—(1) For the purposes of this Act, discrimination shall be taken to occur where— (a) on any of the grounds specified in subsection (2) (in this Act referred to as “the discriminatory grounds”) which exists at present or previously existed but no longer exists or may exist in the future, or which is imputed to the person concerned, a person is treated less favourably than another person is, has been or would be treated, (b) (i) a person who is associated with another person is treated, by virtue of that association, less favourably</p>	<p>Effective implementation</p> <p>Under the Equal Status legislation specifically, Irish law prohibits direct and indirect discrimination on the ground of disability. In addition, it requires reasonable accommodation of the needs of a person with a disability. For the most part, once a body is aware of its statutory obligations, it tends to try to adhere to those obligations in practice. If a person feels they are being</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>than a person who is not so associated is, has been or would be treated, and</p> <p>(ii) similar treatment of that person on any of the discriminatory grounds would, by virtue of paragraph (a), constitute discrimination, or</p> <p>(c) (i) a person is in a category of persons who share a common characteristic by reason of which discrimination may, by virtue of paragraph (a), occur in respect of those persons,</p> <p>(ii) the person is obliged by the provider of a service (within the meaning of section 4 (6)) to comply with a condition (whether in the nature of a requirement, practice or otherwise) but is unable to do so, (iii) substantially more people outside the category than within it are able to comply with the condition, and (iv) the obligation to comply with the condition cannot be justified as being reasonable in all the circumstances of the case.</p> <p>(2) As between any two persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are:</p> <p>(a) that one is male and the other is female (the "gender ground"), (b) that they are of different marital status (the "marital status ground"), (c) that one has family status and the other does not or that one has a different family status from the other (the "family status ground"), (d) that they are of different sexual orientation (the "sexual orientation ground"), (e) that one has a different religious belief from the other, or that one has a religious belief and the other has not (the "religion ground"), (f) subject to subsection (3), that they are of different ages (the "age ground"), (g) that one is a person with a disability and the other either is not or is a person with a different disability (the "disability ground"), (h) that they are of different race, colour, nationality or ethnic or national origins (the "ground of race"), (i) that one is a member of the Traveller community and the other is not (the "Traveller community ground"), (j) that one— (i) has in good faith applied for any determination or redress provided for in Part II or III, (ii) has attended as a witness before the Authority, the Director or a court in connection with any inquiry or proceedings under this Act, (iii) has given evidence in any criminal proceedings under this Act, (iv) has opposed by lawful means an act which is unlawful under this Act, or (v) has given notice of an intention to take any of the actions specified in subparagraphs (i) to (iv), and the other has not (the "victimisation ground").</p> <p>(3) Treating a person who has not attained the age of 18 years less favourably or more favourably than another, whatever that other person's age, shall not be regarded as discrimination on the age ground.</p> <p>(4) The Minister shall, not later than two years after the commencement of this section, review the operation of this Act to assess whether there is a need to add to the discriminatory grounds specified in subsection (2).</p>	<p>discriminated against, they can always seek redress before the Equality Tribunal and be compensated accordingly.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Section 4.</p> <p>—(1) For the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service.</p> <p>(2) A refusal or failure to provide the special treatment or facilities to which subsection (1) refers shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question.</p> <p>(3) A refusal or failure to provide the special treatment or facilities to which subsection (1) refers does not constitute discrimination if, by virtue of another provision of this Act, a refusal or failure to provide the service in question to that person would not constitute discrimination.</p> <p>(4) Where a person has a disability that, in the circumstances, could cause harm to the person or to others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.</p> <p>(5) This section is without prejudice to the provisions of sections 7 (2)(a), 9 (a) and 15 (2)(g) of the Education Act, 1998 , in so far as they relate to functions of the Minister for Education and Science, recognised schools and boards of management in regard to students with a disability.</p> <p>(6) In this section— “provider of a service” means— (a) the person disposing of goods in respect of which section 5 (1) applies, (b) the person responsible for providing a service in respect of which section 5 (1) applies, (c) the person disposing of any estate or interest in premises in respect of which section 6 (1)(a) applies, (d) the person responsible for the provision of accommodation or any related services or amenities in respect of which section 6 (1)(c) applies, (e) an educational establishment within the meaning of subsection (1) of section 7 in relation to any of the matters referred to in subsection (2) of that section, or (f) a club within the meaning of section 8 (1) in respect of admission to membership or a service offered to its members, as the case may be, and “service” shall be construed accordingly; “providing”, in relation to the special treatment or facilities to which subsection (1) refers, includes making provision for or allowing such treatment or facilities, and cognate words shall be construed accordingly.</p>	

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<i>Evolving capacities of the child</i>	
<p>Guardianship of Infants Act 1964 as amended by section 11 of the Children Act 1997</p> <p>28.—(1) If in proceedings under section 6A, 11 or 11B the child to whom the proceedings relate is not a party, the court may, if satisfied that having regard to the special circumstances of the case it is necessary in the best interests of the child to do so, appoint a guardian <i>ad litem</i> for the child.</p> <p>(2) Without prejudice to the generality of subsection (1), in deciding whether to appoint a guardian ad litem, the court shall, in particular, have regard to—the age and understanding of the child,</p>	<p>Incomplete implementation</p> <p>Very few provisions relate to the taking into account of the evolving capacities of the child and there is no formal recognition of this principle.</p>
<i>Right to be heard/right to participate</i>	
<p>Guardianship of Infants Act 1964 as amended by section 11 of the Children Act 1997</p> <p>28.—(1) If in proceedings under section 6A, 11 or 11B the child to whom the proceedings relate is not a party, the court may, if satisfied that having regard to the special circumstances of the case it is necessary in the best interests of the child to do so, appoint a guardian <i>ad litem</i> for the child.</p> <p>(2) Without prejudice to the generality of subsection (1), in deciding whether to appoint a guardian ad litem, the court shall, in particular, have regard to—the age and understanding of the child,</p> <ul style="list-style-type: none"> - any report on any question affecting the welfare of the child that is furnished to the court under section 47 of the Act of 1995 - the welfare of the child - whether and to what extent the child should be given the opportunity to express the child's wishes in the proceedings, taking into account any statement in relation to those matters in any report under section 47 of the Act of 1995, and - any submission made in relation to the matter of the appointment as a guardian ad litem that is made to the court by or on behalf of a party to the proceedings or any other person to whom they relate. <p>(3) For the purposes of this section, the court may appoint as a guardian <i>ad litem</i> the person from whom, under section 47(1) of the Act of 1995, a report on any question affecting the welfare of the child was procured, or such other person as it thinks fit.</p> <p>(4) If having regard to the gravity of the matters that may be in issue or any other special circumstances relating to the particular case, it appears to the court that it is necessary in the best interests of the child that the guardian <i>ad litem</i> ought to be legally represented, the court may order that the guardian <i>ad litem</i> be so represented in the proceedings.</p>	<p>Incomplete implementation</p> <p>Some safeguards are present to ensure this right, however Section 28 of the Guardianship of Infants Act 1964 (as inserted) has never been commenced and so has not been implemented in Ireland to date.</p> <p>The extent to which each court hears the views of the child differs in practice since listening to children is subject to the discretion of the judge hearing the case concerned. Unfortunately, since all child care cases are currently heard in camera, there is no way of knowing how often District Court Judges listen to the views of children in practice.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>(5) The fees and expenses of a guardian <i>ad litem</i> appointed pursuant to subsection (1) and the costs of obtaining legal representation pursuant to an order under subsection (4) shall be paid by such parties to the proceedings concerned, and in such proportions, or by such party to the proceedings, as the court may determine.</p> <p>Child Care Act 1991 Section 3 In the performance of its duties, the health boards must a) take such steps as it considers requisite to identify children who are not receiving adequate care and protection and co-ordinate information from all relevant sources relating to children in its area; (b) having regard to the rights and duties of parents, whether under the Constitution or otherwise— (i) regard the welfare of the child as the first and paramount consideration, and (ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child; and have regard to the principle that it is generally in the best interests of a child to be brought up in his own family.</p>	
Right to be free from violence	
<p>Non-Fatal Offences Against the Person Act 1997 Criminal Law (Sexual Offences) Act 2006 Section 2 1) Any person who engages in a sexual act with a child who is under the age of 15 years shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment. (2) Any person who attempts to engage in a sexual act with a child who is under the age of 15 years shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment. (3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15 years. (4) Where, in proceedings for an offence under this section, it falls to the court to consider whether the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15 years, the court shall have regard to</p>	<p>Effective implementation</p> <p>This legislation is rigorously applied by the Courts in practice. Ultimately, the decision lies with the Director of Public Prosecutions as to whether to proceed with the case or not based on the evidence collected by the Gardaí.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances.</p> <p>(5) It shall not be a defence to proceedings for an offence under this section for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.</p> <p>Criminal Law (Sexual Offences) Act 1993 Section 5 5.—(1) A person who— (a) has or attempts to have sexual intercourse, or (b) commits or attempts to commit an act of buggery, with a person who is mentally impaired (other than a person to whom he is married or to whom he believes with reasonable cause he is married) shall be guilty of an offence and shall be liable on conviction on indictment to— (i) in the case of having sexual intercourse or committing an act of buggery, imprisonment for a term not exceeding 10 years, and (ii) in the case of an attempt to have sexual intercourse or an attempt to commit an act of buggery, imprisonment for a term not exceeding 3 years in the case of a first conviction, and in the case of a second or any subsequent conviction imprisonment for a term not exceeding 5 years. (2) A male person who commits or attempts to commit an act of gross indecency with another male person who is mentally impaired shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years.(3) In any proceedings under this section it shall be a defence for the accused to show that at the time of the alleged commission of the offence he did not know and had no reason to suspect that the person in respect of whom he is charged was mentally impaired. (4) Proceedings against a person charged with an offence under this section shall not be taken except by or with the consent of the Director of Public Prosecutions. (5) In this section "mentally impaired" means suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation.</p>	
Right to family life	
The Irish Constitution	Incomplete implementation

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Articles 41 2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.</p> <p>Article 42 1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.</p> <p>European Convention on Human Rights Act 2003</p>	<p>The Irish framework provides protection to family life, however the Irish Constitution does not afford any recognition to family structures which fall outside the marital family.</p>
<i>Right to assistance</i>	
<p>Social Welfare (Consolidation) Act 2005 Section 219 219.—(1) A child shall be a qualified child (in this Part referred to as “a qualified child”) for the purposes of child benefit where— (a) he or she is under the age of 16 years, or (b) having attained the age of 16 years he or she is under the age of 19 years and— (i) is receiving full-time education, the circumstances of which shall be specified in regulations, or (ii) is, by reason of physical or mental infirmity, incapable of self-support and likely to remain so incapable for a prolonged period, and (c) he or she is ordinarily resident in the State, and (d) he or she is not detained in a reformatory or an industrial school and is not undergoing imprisonment or detention in legal custody.</p> <p>Chapter 10 – Disability allowance Section 210.—(1) Subject to this Act, an allowance (“disability allowance”) shall be payable to a person— (a) who has attained the age of 16 years but has not attained pensionable age, (b) who is by reason of a specified disability substantially restricted in undertaking employment (in this Chapter referred to as “suitable employment”) of a kind which, if the person was not suffering from that disability, would be suited to that person’s age, experience and qualifications, whether or not the person is availing of a service</p>	<p>Effective implementation</p> <p>The right to assistance is effectively implemented in the Irish legal framework.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>for the training of disabled persons under section 68 of the Health Act 1970 , and (c) whose weekly means, subject to subsection (2), do not exceed the amount of disability allowance (including any increases of that allowance) which would be payable to the person under this Chapter if that person had no means.</p>	
<i>Right to education (including inclusive education)</i>	
<p>The Irish Constitution Article 42 3. 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State. 2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social. 4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation. 5. In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.</p> <p>Education Act 1998 6. Every person concerned in the implementation of this Act shall have regard to the following objects in pursuance of which the Oireachtas has enacted this Act: (a) to give practical effect to the constitutional rights of children, including children who have a disability or who have other special educational needs, as they relate to education; (b) to provide that, as far as is practicable and having regard to the resources available, there is made available to people resident in the State a level and quality of education appropriate to meeting the needs and abilities of those people; 9.—A recognised school shall provide education to students which is appropriate to their abilities and needs and, without prejudice to the generality of the foregoing, it shall use its available resources to— (a) ensure that the educational needs of all students, including those with a disability or other special</p>	<p>Effective implementation</p> <p>As a result of the constitutional protection afforded the right to free primary education as well as the various pieces of legislation in the area, there is a responsibility on primary school principals across Ireland to ensure that the educational provision within their schools is all inclusive and where this is not the case, they must ensure that an assessment is carried out detailing the needs of the child concerned and draft and implement a individual education plan to meet those needs.</p> <p>Generally, the extent to which this is carried out in practice differs from school to school. It is a provision which is hugely reliant on State resourcing and in recent times in particular, these resources have been cut back. For the most part, schools do the best they can do for the</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>educational needs, are identified and provided for,</p> <p>15.—(1) It shall be the duty of a board to manage the school on behalf of the patron and for the benefit of the students and their parents and to provide or cause to be provided an appropriate education for each student at the school for which that board has responsibility. (2) A board shall perform the functions conferred on it and on a school by this Act and in carrying out its functions the board shall— (g) use the resources provided to the school from monies provided by the Oireachtas to make reasonable provision and accommodation for students with a disability or other special educational needs, including, where necessary, alteration of buildings and provision of appropriate equipment.</p> <p>21.—(1) A board shall, as soon as may be after its appointment, make arrangements for the preparation of a plan (in this section referred to as the “<i>school plan</i>”) and shall ensure that the plan is regularly reviewed and updated.</p> <p>(2) The school plan shall state the objectives of the school relating to equality of access to and participation in the school and the measures which the school proposes to take to achieve those objectives including equality of access to and participation in the school by students with disabilities or who have other special educational needs.</p> <p>7.—(1) Each of the following shall be a function of the Minister under this Act:</p> <p>(a) to ensure, subject to the provisions of this Act, that there is made available to each person resident in the State, including a person with a disability or who has other special educational needs, support services and a level and quality of education appropriate to meeting the needs and abilities of that person,</p> <p>33.—The Minister, following consultation with patrons, national associations of parents, recognised school management organisations and recognised trade unions and staff associations representing teachers, may make regulations for the purpose of giving effect to this Act and, without prejudice to the generality of the foregoing, the Minister may make regulations relating to all or any of the following matters:</p> <p>(i) access to schools and centres for education by students with disabilities or who have other special educational needs, including matters relating to reasonable accommodation and technical aid and equipment for such students;</p> <p>EPSEN Act 2004</p> <p>2.—A child with special educational needs shall be educated in an inclusive environment with children who do not have such needs unless the nature or degree of those needs of the child is such that to do so would be inconsistent with—</p>	<p>children under their responsibility and if this is not the case, the parents have the right to take their case to the Department of Education or indeed the courts.</p>

Analysis of the legal implementation of the CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
(a) the best interests of the child as determined in accordance with any assessment carried out under this Act, or (b) the effective provision of education for children with whom the child is to be educated.	

ANNEX 2 – STATISTICAL INFORMATION

Number of violation ¹¹²	Violence	Gender discrimination	Other discrimination	Criminal suspects
Year				
2007	n/a	n/a	n/a	n/a
2008	n/a	n/a	n/a	n/a
2009	n/a	n/a	n/a	n/a
2010	n/a	n/a	n/a	n/a
2011	n/a	n/a	n/a	n/a

No data identified on these issues.

¹¹² Cases reported to any relevant body; depending on the availability of data.

ANNEX 3 - STUDY ON MEMBER STATES' POLICIES FOR CHILDREN WITH DISABILITIES - EXECUTIVE SUMMARY

There are about 100 million children in the European Union and about 80 million European persons with disabilities. While the number of children and the number of persons with disabilities is well documented, the same cannot be said of children with disabilities. Children with disabilities combine different factors of vulnerability. As children the protection of their rights requires the adoption of special measures that are recognised by the UN Convention on the Rights of the Child (CRC). As individuals with disabilities, they are particularly vulnerable EU citizens who deserve specific safeguards and protection as acknowledged by the UN Convention on the Rights of Persons with Disabilities (CRPD).

Children with disabilities and their families face on a daily basis specific problems such as the lack of assistance and support for their inclusion in schools, experiences of violence and the lack of proper tools for reporting them, difficulties in accessing buildings or services or troubles in being heard and participating in decisions affecting their lives.

The Conventions include provisions addressing these concerns and providing protection to the right to enjoy all human rights and freedoms with no discrimination ensuring

- equality of opportunities and accessibility,
- the best interests of the child as a consideration in all actions concerning them,
- the evolving capacities of children with disabilities as a consideration in decisions affecting them,
- the right to be heard in proceedings and decision-making processes affecting the child and the right to a full and effective participation,
- the right to family life,
- the right to effective access to education and inclusive education,
- the right to health care,
- the right to assistance, and
- freedom from violence.

This study is structured to mirror the requirements of both conventions reflecting the main rights of children with disabilities to be implemented generally in the EU due to the high rate of ratification by EU Member States. Moreover, in December 2010, the European Union became a party to the CRPD. In doing so, the EU recognised the challenges persons with disabilities face in securing the fulfilment of their rights and assumed the responsibility for its implementation alongside Member States. The EU's responsibility towards the implementation of the CRC is of a different scale. Despite the lack of ratification by the EU, the CRC rights and principles guide the EU policies and action since the Treaty recognises the rights of the child as an EU objective.

This study assesses the current situation with respect to the rights of children with disabilities in the EU and the need for EU legislation or for other measures. The options to act at EU level are framed within the extent of the competences conferred by the Treaties, which can be exclusive, shared or supporting competences (Article 2 TFEU).

The current EU legislative and policy framework give recognition to the Conventions' rights and principles applicable to children with disabilities and a certain degree of implementation. However, the existing EU legislation relevant to this area is mainly sectoral (i.e., employment or immigration). The legislation addresses the situation of persons with disabilities separately from the rights of the child, whereas there is a need to consider children with disabilities as they face multiple discrimination, on the basis of age as well as disability, and to tailor measures to ensure that their rights are respected.

A. Comparative analysis of national legal frameworks

The comparative analysis of the national legal frameworks on children with disabilities' rights in 18 Member States¹¹³ is based on a set of criteria developed to enable an assessment of comparable data reported in each national study. The criteria are based on the requirements within each right and principles identified as pertinent to the situation of children with disabilities.¹¹⁴ The criteria are derived from the text of both conventions and the CRC General Comments on their interpretation.

Overall, the 18 Member States have in place comprehensive legal frameworks reflecting the main aspects of the rights and principles identified under the CRPD and CRC. While it may be stated that the rights of children with disabilities are broadly recognised under national legal systems either through general or specific legislation, their practical implementation revealed to be problematic in most Member States.

Consideration of the **principle of best interests of the child** is generally recognised under national laws. However, implementation is mostly limited to family and social protection decisions affecting children and the specific needs of children with disabilities are not recognised. The country studies found a lack of understanding of what the principle entails, along with insufficient development of the concept through law or jurisprudence and an overall lack of implementing rules.

The **right to non-discrimination** based on disability or age is reflected in national legislations, however, the implementation of the right is generally only partial and the reasonable accommodation measures are generally insufficient to guarantee the right. In practice, accessibility remains a key problem in most Member States. Reference to the multi-discrimination factors faced by children with disabilities or girls with disabilities is rarely acknowledged. There is a lack of monitoring results and of data on cases of right's violations that could help define more effective measures.

Most countries partially take account of the **evolving capacities** of the child mainly on the basis of considerations of age, maturity and development of the child. However, the situation of children with disabilities is not specifically acknowledged. The implementation is limited to a certain type of decisions and Member States tend to primarily take into consideration the child's age, which for children with disabilities may not be relevant and which can effectively exclude them from decision making processes that affect them.

¹¹³ For this study 18 Member States legal frameworks have been analysed: Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, the Netherlands, Malta, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom. Those countries have been selected by the European Parliament in the Terms of Specifications of this study.

¹¹⁴ 8 rights and principles have been identified as most relevant to the situation of children with disabilities: the best interests of the child, the right to non-discrimination, the consideration of evolving capacities, the right to participation/to be heard, the right to be free from violence, the right to family life, the right to assistance and the right to education.

The **rights to participation and to be heard** in decision making processes affecting children with disabilities are recognised under the legislation of the 18 Member States. However, their implementation is often limited to some sectoral procedures mostly regarding family law and at a certain extent in education. In practice, children with disabilities are not systematically involved and do not get to participate in public and private life at the same level than their able-peers.

In general **freedom from violence** is recognised by Member States' legislation. However, abuse against children with disabilities is a key problem acknowledged in all country reports. Violence occurring in institutions is of particular concern. The lack of systematic data and the difficulty for victims to report abuses do not allow an overview of the situation needed for the adoption of appropriate policies and measures.

The **right to family life** is widely recognised in the laws of the selected Member States. However, insufficient guidance and support to families for the integration of the child with disabilities and for helping them in their day to day lives is a key problem in most of the 18 Member States. Without proper assistance, families with difficulties might give up on their responsibility leading to a situation where alternative options are unlikely and institutionalisation is the only response available.

Overall the right to various forms of **assistance** (financial, social, health care, etc.) both for children with disabilities and for their families is recognised in legislation or regulatory rules. However, again in most cases assistance is sectoral (mainly social and health) and insufficient (financially and human assistance). The economic crisis is contributing to the removal and reduction of assistance in most Member States. Access to assistance is often perceived not as an instrument enabling protection of rights but rather as a discretionary measure subject to budget constraints.

All Member States recognise the **right to education** in their Constitutions or legal frameworks; however, the ability to access the school of choice for children with disabilities remains very challenging in practice. Mainstream schools remain largely inaccessible to children with disabilities in many Member States, while in other countries schools have insufficient resources and support for the child with disabilities is scarce. In addition, teachers in mainstream schools lack training and awareness on the needs of children with disabilities and programmes are not systematically adapted to them.

Compliance mechanisms are weak and lack adaptation to the situation of children with disabilities. Lack of information and guidance to families with children with disabilities on their rights, procedures and competent authorities decreases their ability to access these tools.

On the basis of these findings, the study sets forth conclusions and recommendations for EU action, taking into account the competence of the EU conferred by the Treaties on a range of policy areas, including disability and children's rights.

B.1 The role of the European Union

The EU has no explicit competence on children with disabilities. However the EU framework contains provisions recognising the EU's role to promote the protection of the rights of the child as an EU objective as well as its competence to combat discrimination based on disability. Furthermore, the Charter of Fundamental Rights of the European Union, with similar legal value as the Treaties, recognises the right to non-discrimination on ground of disability in Article 21 and the rights of the child under its Article 24. This recognition, while important, cannot extend the competences of the EU as conferred by the Treaties.

The EU, together with Member States in areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of Article 19 TFEU or in other matters falling within EU competence. Article 19(1) TFEU provides the legal basis for EU action (see among others the proposal for equal treatment Directive of 2008¹¹⁵) but the unanimity requirement makes achieving agreement under this legal base difficult. Article 19(2) provides the possibility for the EU to adopt basic principles and incentive measures to support Member States' action to combat discrimination through the ordinary legislative procedure.

Neither the above mentioned proposal for an equal treatment Directive nor any other EU measures provide for a **definition of disability**. Prior to the adoption of the CRPD, in a judgment in July 2006, the Court of Justice of the European Union (CJEU) defined disability in the same sense as the CRPD within the context of employment policy as 'a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.¹¹⁶ Recently, the CJEU has further developed this concept¹¹⁷ stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life *on an equal basis with other workers* and calling on the employer to take reasonable accommodation measures.

EU action is also possible when linked to other policy areas of EU competence. Several issues related to the rights of the child with disabilities are linked to EU policies such as social policy, economic, social and territorial cohesion, transport, freedom, security and justice all of which are shared competence. In addition, the EU has the option to take action to support Member States policies in a number of areas affecting children with disabilities such as education, sports, youth or health.

B. 2 Existing relevant EU secondary legislation

The **best interests of the child as primary consideration in actions relating to children** is a fundamental requirement recognised in EU legislation. Article 7 of the Mediation Directive 2008/52¹¹⁸ requires the mediator to take into account the best interests of the child when deciding whether the child can give evidence in judicial proceedings. The

¹¹⁵ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:en:NOT> (last accessed 6.5.13).

¹¹⁶ Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, *Sonia Chacón Navas v Eurest Colectividades*, pt 43.

¹¹⁷ Judgment of the Court, Joint cases C-335/11 and C-337/11 of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11) and *HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S* (C-337/11), pt 47.

¹¹⁸ Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

Family Reunification Directive¹¹⁹ requires Member States' authorities to consider the best interests of children when examining an application for family reunification (Article 5)¹²⁰. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC¹²¹ on victims of trafficking in human beings.

Non-discrimination at EU level is currently addressed by four EU Directives to combat discrimination on the basis of protected grounds such as sex, racial or ethnic origin, religion or belief, age and sexual orientation, most of them restricted to the area of employment.¹²² They lay down rules 'for combating discrimination (...) with a view to putting into effect in the Member States **the principle of equal treatment**'.¹²³ Disability is recognised as grounds for discrimination under Directive 2000/78/EC and, furthermore, protection of equality between men and women in matters of employment and occupation under Directive 2006/54/EC applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin does not include disability as a protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply of goods and services refers to discrimination on grounds of sex but not on age or disability.

The European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for a Directive in 2008 aiming at completing the legal framework on anti-discrimination law and providing for a more equal level of protection across the grounds¹²⁴.

Other measures in policy areas such as the internal market or transport have an impact on children with disabilities' access to services with no-discrimination. For example, Directive 2001/85/EC on the carriage of passengers, requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, accessibility to lifts, in carrying out public procurement or in measures for telecommunication¹²⁵.

Within the remit of its competences, the EU's action to combat discrimination is complemented with activities by the EU Institutions to improve knowledge about discrimination (e.g. by raising awareness), support intermediary actors (e.g. NGOs, social partners and equality bodies) to improve their capacity to combat discrimination and to encourage the exchange of national good practices.

The consideration of children's **evolving capacities** is recognised in the Brussels II*bis*

¹¹⁹ Council Directive 2003/86/EC, on the right to family reunification.

¹²⁰ 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' FRA, March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf.

¹²¹ Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration.

¹²² Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast directive); Directive 2004/113/EC on the principle of equal treatment between women and men in the access to and supply of goods and services; Directive 2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

¹²³ Article 1 Directive 2000/43/EC.

¹²⁴ Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). It is currently blocked in the Council.

¹²⁵ 'Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214', European Commission, Brussels, 2010, Executive Summary available at http://www.efc.be/programmes_services/resources/Documents/UN_Convention_Summary_EN.pdf.

Regulation 2201/2003 which requires courts to hear the view of the child according to his/her age or degree of maturity. The same formulation is found in EU legislation concerning immigration and asylum in relation to unaccompanied minors.

Children's right **to participation** is recognised in some Commission strategic documents including the 2005 'European policies concerning youth', the 2006 'EU strategy on the rights of the child', the Youth in Action Programme and the EU Agenda for the Rights of the child of 2011. EU legislation on immigration and asylum recognise the right of the child to be heard during proceedings under the Brussels II*bis* Regulation 2201/2003.

The EU has adopted a number of measures on the **protection of children from violence**¹²⁶ relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives¹²⁷ that have been adopted to replace some of these instruments. For example, the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, focus on the protection of children which are more vulnerable than adults and establishes more severe penalties when the offence is committed against vulnerable persons such as children and persons with disabilities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime recognises that a victim of crime should be treated without discrimination based on any ground including age and disability. Lastly, Directive 2011/92/EU on combating sexual abuse, the sexual exploitation of children and child pornography¹²⁸ provides the need for specific protection of children with disabilities.

The **right to family life** and the maintenance of the child in family context is at the heart of Council Regulation 2201/2003 Brussels II*bis* (EC)¹²⁹. In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification¹³⁰ and the provisions of the Directives on asylum¹³¹ regarding unaccompanied minors and the respect for the family unit.

¹²⁶ Framework Decision 2002/629/JHA on combating trafficking in human beings; Council Directive 2004/81/EC on the residence permit issued to third-country nationals victims of trafficking in human beings; Council Framework Decision 2004/68/JHA on combating sexual exploitation of children and child pornography; Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings; Council Resolution 2001/C 283/01 on the contribution of civil society in finding missing or sexually exploited children. Decision No 1351/2008/EC establishing Safer Internet Programme 2009-2013.

¹²⁷ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

¹²⁸ Article 1 Directive 2011/92/EU.

¹²⁹ Council Regulation (EC) No 2201/2003, concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

¹³⁰ Council Directive 2003/86/EC on the right to family reunification; Council Regulation (EC) No 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; Council Directive 2004/83/EC of on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection; Directive 2008/115/EC, on common standards and procedures in Member States for returning illegally staying third-country nationals.

¹³¹ Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons; Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals, stateless persons or refugees as persons who otherwise need international protection; Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting or withdrawing refugee status.

The principle of **maximum inclusion in society** of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020¹³² and the EU 2020 Programme in relation to education and training¹³³. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities¹³⁴ addressed the problem of access to education by children with disabilities. In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities¹³⁵ stressed the need to ensure full respect for the rights of the child, including the right to education and the right to participate in community life of children with disabilities. The EU Institutions also support the **European Agency for Development in Special Needs Education**, the independent organisation acting as a platform for collaboration on special educational needs and the promotion of full participation within mainstream education and training¹³⁶.

C. Recommendations for EU action

When evaluating the need for specific recommendations aimed at improving the situation of children with disabilities, it is important to highlight that children with disabilities are first and foremost children with the same needs as any other children and who should be beneficiaries of all rights recognised by the CRC. Their intrinsic difference with their peers needs to be recognised for designing appropriate legislative and policy measures.

Horizontal issues

- As a first and general recommendation, all EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.
- The European Commission, liaising with the UN Secretariat for the CRPD and the UN Secretariat for the CRC, should ensure Member States understanding and implementation of several definitions of the Conventions that are cornerstones for the implementation of the rights of children with disabilities, namely the definition of "disability", the "best interests of the child" and the "evolving capacities of the child". They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account.

To that end, it is recommended that the Commission takes the initiative to provide clarification at EU level of the CRPD definition of "disability" as it is considered to be too broad in practice and its implementation at national level is therefore difficult. The development of guidance documents, exchange of best practices and promotion of existing manuals are recommended.

- The European Commission should take action to promote that children with disabilities are considered in existing mainstreaming initiatives for non-discrimination and equal treatment.
- The EP, the Council and the Commission should promote the development of national

¹³² Area of action 5 of the Commission Communication European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636 final.

¹³³ Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.

¹³⁴ Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.

¹³⁵ European Parliament Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)).

¹³⁶ European Agency for Development in Special Needs Education website available at <http://www.european-agency.org/about-us>.

information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, including access to assistance measures, competent authorities, procedures and compliance mechanisms. Specific tools addressed to these families could include an EU web portal which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This initiative could bring citizens closer to the EU.

- The EU Institutions should take a leading role in promoting awareness-raising on issues concerning the rights of children with disabilities, their interests and specific needs in order to promote the full implementation of the principle of best interests of children with disabilities. The EP and the Council could also use their budgetary powers to provide for financing of awareness-raising campaigns.

Best interests of the child

- While most countries have legislation recognising the principle of best interests of the child, only few Member States contain in their legislation a general requirement for its systematic consideration in all decisions affecting children. Some Member States (such as Sweden and the UK) have introduced child impact assessments of proposed legislation. It is recommended that the European Commission promotes the exchange of these initiatives and develops a guide on methodologies for carrying out these child impact assessments implementing the best interests of the child principle.

Right to non-discrimination

- The concept of reasonable accommodation in relation to the specific situation of children with disabilities needs clarification and further development to define the boundaries for the use of disproportionate burden. The EU, through the Commission, could support this through exchange of best practices at national level on the implementation of reasonable accommodation covering different situations. This would help defining the baselines from which the respect of the right requires public authorities' action and prevents it from being subject to arguments of disproportionate costs.
- The 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, if adopted, has the potential of addressing the situation of children with disabilities. Amendment 37 introduced by the European Parliament refers to multiple discrimination. Within this context, clarification could be introduced in the recitals of the proposed Directive in order to ensure that the situation of children with disabilities is considered as a part of its scope.
- The European Commission's draft for an upcoming European Accessibility Act should explicitly cover children with disabilities' access to goods and services, at least with a reference to multiple discrimination cases.

Evolving capacities of children with disabilities

- The EP should consider ways to raise awareness and promote taking into account the evolving capacities of children, including children with disabilities, with the aim to have the principle applied in all decision making processes affecting them.
- Any new legislation on child-friendly justice should include consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them. The

Commission should ensure that these provisions are included in the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children, or the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.

- Furthermore, it is recommended that the European Commission, the Council and the EP promote the use of the Council of Europe Guidelines on child-friendly justice and support training for the relevant professionals at all levels.

Right of participation of children with disabilities

- The anticipated European Accessibility Act could provide for the development of tools to ensure the participation of children with disabilities in the consultation processes of the legislative and policy initiatives affecting them.
- The EP should explore ways to raise awareness on the requirements needed to ensure the right of participation of children with disabilities through concrete measures such as simulation of plenary meetings in the EP involving children with disabilities, guaranteeing physical access to the EP buildings or designing tools to ensure non-physical participation.

Right to be heard of children with disabilities

- In order to enable effective implementation of the right to be heard by children with disabilities, changes in the attitudes of judicial, administrative and enforcement officers are needed. To that end, the EP, the Council and the Commission should encourage Member States to develop awareness-raising actions and training addressed at public authorities.
- The Commission in preparing legislation on child-friendly justice, should ensure that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them, enabling a climate of trust between the child and the judicial and enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

Freedom from violence

- It is recommended that the EP, the Council and the Commission promote the development of statistical information on the situation of violence affecting children, and in particular children with disabilities. Furthermore, they should promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys so as to provide systematic data on the situation of children with disabilities.
- The European Commission and the EP should promote FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority.
- The European Commission should consider in particular the need for measures at EU level aimed at reducing the number of cases of violence against children, especially children with disabilities, in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working

groups with Member States experts to consider:

- proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children,
 - the set up of control mechanisms and regular inspections,
 - peer reviews or the Open Method of Coordination for implementation of proposals,
 - access to information and communication services targeted at improving the system of complaints concerning children's right to freedom from violence.
- The Commission could promote the organisation of specialised EU-wide training and workshops amongst professionals to share knowledge on complaint procedures, reporting measures and accessibility of communication services for children with disabilities, especially for children with severe disabilities or intellectual impairments. The budgetary authority should provide adequate funding for these activities.

Right to family life of children with disabilities

- The Commission, the Council and the EP should encourage Member States to set up appropriate support structures for families with children with disabilities in order to reduce the risks of the child losing family life while safeguarding the best interests of children with disabilities.
- Within the Open Method of Coordination, the Commission should develop Guidelines on minimum requirements of residential institutions with regards to children with disabilities. The Guidelines would aim at ensuring that residential care centres have a small number of users and the capacity to host children with autism or with intellectual disabilities.
- The Commission should propose to the budgetary authority the use of EU funds for the protection of children's right to family life, prioritising funds for families while ensuring that the good quality of the institutions is maintained.

Access to assistance

- A special single national body (with regional offices) responsible for the management of services, budget and assistance of children and their families should be established in order to ensure consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.
- The EP should continue to lead actions on children with disabilities to inform Member States on the negative impacts of budget cuts on implementation of their rights, especially in the field of education, social protection and health care.
- Within the European Semester process, the Commission should provide appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

Access to inclusive education

- The Commission should develop actions to support Member States in improving education systems for children with disabilities through the Open Method of Coordination or peer review while respecting their general competence for matters

related to education. Action at EU level could include:

- Development of best practice guides and recommendations on the minimum type of resources needed in mainstreaming schools, and on the role of parents and children with disabilities in decision-making processes affecting children with disabilities or the development of education objectives;
- Promotion of training for teachers on better understanding of children with disabilities' needs and evolving capacities, teaching methodologies and handling of children with specific disabilities in a class together with their able-peers;
- Promotion of teaching tools that help the inclusion of children with disabilities in schools and outside of schools such as the Council of Europe's COMPASS manual;
- Promotion of anti-bullying and anti-stigmatisation initiatives, including awareness-raising campaigns promoting inclusion of children with disabilities; and
- Development of quality objectives for education offered to children with disabilities and the promotion of initiatives to maintain the support for higher education.

EU Funding

- The EP, the Council and the Commission should promote among Member States the use of the Structural Funds to foster the development of quality social services provided for children with disabilities, while facilitating the implementation of the Voluntary European Quality Framework for Social Services;
- The EP, the Council and the Commission should promote the development of family and community-based alternatives with the purpose of de-institutionalisation.
- The EP, the Council and the Commission should encourage the use of structural funds for improving accessibility and inclusive education.

ANNEX 4 - OVERVIEW OF RELATED STUDIES

Name of the Study	PE number	ISBN number
Study on Member States' Policies for Children with Disabilities	PE 474.416	978-92-823-4548-1
Country Report on Belgium for the Study on Member States' Policies for Children with Disabilities	PE 474.417	978-92-823-4542-9
Country Report on the Czech Republic for the Study on Member States' Policies for Children with Disabilities	PE 474.418	978-92-823-4549-8
Country Report on Estonia for the Study on Member States' Policies for Children with Disabilities	PE 474.419	978-92-823-4561-0
Country Report on Finland for the Study on Member States' Policies for Children with Disabilities	PE 474.420	978-92-823-4552-8
Country Report on France for the Study on Member States' Policies for Children with Disabilities	PE 474.421	978-92-823-4562-7
Country Report on Germany for the Study on Member States' Policies for Children with Disabilities	PE 474.422	978-92-823-4553-5
Country Report on Greece for the Study on Member States' Policies for Children with Disabilities	PE 474.423	978-92-823-4563-4
Country Report on Hungary for the Study on Member States' Policies for Children with Disabilities	PE 474.424	978-92-823-4554-2
Country Report on Ireland for the Study on Member States' Policies for Children with Disabilities	PE 474.425	978-92-823-4564-1
Country Report on Italy for the Study on Member States' Policies for Children with Disabilities	PE 474.426	978-92-823-4555-9
Country Report on Malta for the Study on Member States' Policies for Children with Disabilities	PE 474.427	978-92-823-4565-8
Country Report on the Netherlands for the Study on Member States' Policies for Children with Disabilities	PE 474.428	978-92-823-4556-6

Country Report on Poland for the Study on Member States' Policies for Children with Disabilities	PE 474.429	978-92-823-4566-5
Country Report on Romania for the Study on Member States' Policies for Children with Disabilities	PE 474.430	978-92-823-4567-2
Country Report on Slovenia for the Study on Member States' Policies for Children with Disabilities	PE 474.431	978-92-823-4557-3
Country Report on Spain for the Study on Member States' Policies for Children with Disabilities	PE 474.432	978-92-823-4558-0
Country Report on Sweden for the Study on Member States' Policies for Children with Disabilities	PE 474.433	978-92-823-4568-9
Country Report on England, Wales and Northern Ireland for the Study on Member States' Policies for Children with Disabilities	PE 474.434	978-92-823-4559-7

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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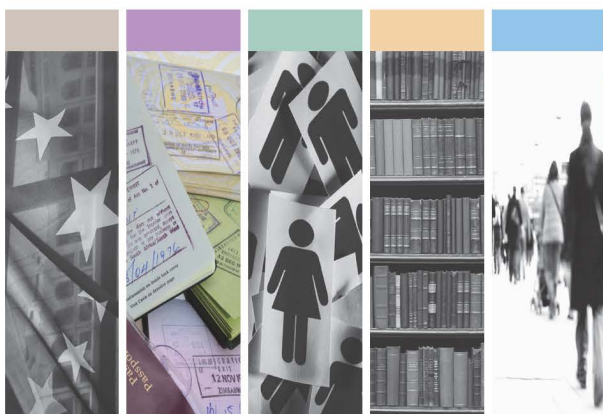
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