

**Centre for Disability Law and Policy**
National University of Ireland, Galway
University Road, Galway, Ireland

**Tel**: +353 (0)91 495888,
**SMS/Text Phone:** +353 (0)87 6660634,
**Fax:** +353 (0)91 495569

**Email:** info.cdlp@nuigalway.ie

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**Oireachtas Joint Committee on Public Oversight & Petitions hearing on the medical criteria of disabled drivers and passengers (Tax Concessions) Regulations 1994 SI 353 of 1994**

**Submission
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# The Centre for Disability Law and Policy – About us

The Centre for Disability Law and Policy (CDLP) at the National University of Ireland Galway was formally established in 2008. The CDLP’s work is dedicated to producing research that informs national and international disability law reform, guided by the principles of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Since its establishment, the CDLP has organised and participated in a number of key events regarding disability law reform. The CDLP is also a regular contributor of legislative and policy submissions on issues regarding disability and human rights and has made submissions to the United Nations Committee on the Rights of Persons with Disabilities, the Australian Law Reform Commission, the Department of Justice and the Irish parliamentary Committee on Justice, Defence and Equality. The CDLP has organised and participated in a number of key events regarding disability law. For more information on our international engagement on the CRPD, please see out website at https://www.nuigalway.ie/cdlp/.

# Introduction

The CDLP welcomes the opportunity to make this submission to the Oireachtas Joint Committee on Public Oversight & Petitions on ‘The medical criteria of disabled drivers and passengers (Tax Concessions) Regulations 1994 SI 353 of 1994.’

In Ireland there have historically been two schemes which provide financial support to modify vehicles for disabled drivers and passengers – the Motorised Transport Grant and the tax relief scheme which is the subject of this submission. The Motorised Transport Grant, administered by the HSE, was only available to disabled drivers, not to passengers, and this grant closed to new applicants in February 2013. Therefore, at the time of writing, the only financial support available for the adaptation of a motorised vehicle for disabled drivers and passengers is the tax relief provided for in SI 353 of 1994. In the CDLP’s view, the narrow eligibility criteria for this tax relief makes it very difficult for many people with disabilities, including upper limb amputees, people with autism and people with intellecutal disabilities, who require an adapted vehicle, to benefit from the scheme. The criteria to avail of tax relief needs to be extended in order to realise the full potential of the scheme, and ensure that financial support is available for all disabled drivers and passengers who need to adapt a vehicle due to their disability. This is particularly important where access to an adapted vehicle is the only means to ensure that a person with a disability can remain in employment, live independently and be included in the community.

In this submission, we first set out the core aspects of the existing scheme, and then consider the applicable international human rights law, EU law and policy, and existing Irish legislation and policy instruments which could guide a revision of this tax relief scheme. We also examine comparative jurisdictions which operate similar schemes to Ireland, namely, France, Cyprus, and New Zealand, to provide a basis for our recommendations for reform.

# Disabled Drivers and Passengers (Tax Relief) Scheme

The eligibility criteria for a Primary Medical Certificate which entitles an individual to apply for tax relief to adapt a motor vehicle is set out in SI 353 of 1994 as follows:

(*a*) persons who are wholly or almost wholly without the use of both legs;

(*b*) persons wholly without the use of one of their legs and almost wholly without the use of the other leg such that they are severely restricted as to movement of their lower limbs;

(*c*) persons without both hands or without both arms;

(*d*) persons without one or both legs;

(*e*) persons wholly or almost wholly without the use of both hands or arms and wholly or almost wholly without the use of one leg;

(*f*) persons having the medical condition of dwarfism and who have serious difficulties of movement of the lower limbs.

These criteria are drawn from the Finance Act 1989, and given the advances in technology and knowledge about disability in the past 25 years, it is timely to consider revising these criteria. The criteria are almost entirely focused on difficulties in functional mobility which do not correspond directly to the need to adapt a vehicle for a person with a disability. For example, a person without the use of one leg may be able to drive an automatic car without the need for much further adaptation of the vehicle. By contrast, a person without the use of one arm may require much more adaptations to the controls of the vehicle, but will not, under the current criteria, qualify for tax relief. Similarly, a person with a cognitive impairment or neurodisability, does not qualify for this relief, even though a person with such a disability travelling as a passenger in a vehicle may also require adaptations to the vehicle, such as changes to the locking mechanisms. Given these examples, it may be more appropriate to consider revising eligibility for this tax relief to focus on the need for adaptation of a vehicle due to the individual’s disability, on a case by case basis.

# International Human Rights Standards

Ireland is a signatory to the UN Convention on the Rights of Persons with Disabilities (hereafter referred to as the CRPD), and is on course to ratify it. As a signatory, Ireland is under a duty not to take actions which would be contrary to the spirit and purpose of the CRPD. This Convention is the first legally-binding international human rights instrument to which the EU is a State Party. Since the EU concluded (i.e. ratified) the CRPD in 2010,[[1]](#footnote-1) the EU institutions (the Parliament, Commission and Council) are bound by the obligations of the CRPD in all areas of EU competence. The CRPD requires States Parties to protect and safeguard all human rights and fundamental freedoms of persons with disabilities. The National Disability Strategy Implementation Plan reaffirms Ireland’s commitment to ratifying the CRPD and realising the full personhood of all persons with disabilities.[[2]](#footnote-2)

The principles set out in the CRPD, specifically, those contained in Article 19, living independently and being included in the community, Article 20, personal mobility, and Article 27, work and employment, are all relevant to the subject of this submission.

Article 19 sets out obligations on the state to ensure the full inclusion of people with disabilities in the community. This includes facilitating choice in where and with whom to live, on an equal basis with others. The article also mandates provisions of supports to prevent isolation and segregation from the community. Access to a vehicle is often crucial, particularly for people with disabilities in rural areas, to ensure full inclusion in the community and active participation in community events.

Article 20 focuses specifically on personal mobility, this requires States to facilitate the provision of a broad range of supports that allow for a person to achieve maximum mobility “manner and time of their choice” in a way that is affordable for them. The adaptation of a vehicle is clearly important to achieve greater personal mobility for many people with disabilities.

Article 27 requires States to ensure that people with disabilities have equal access to work and employment, and can participate in is a labour market that is “open, inclusive and accessible”. Lack of appropriate transport is a significant barrier to achieving full participation in the labour market. Given the priority placed on employment in current Irish economic and social policy, regard should be had to the mechanisms which allow people with disabilities to enter and remain in employment on the open labour market – including the availability of accessible transport.

# Standards of the European Union

Ireland’s status as a member state of the EU also creates further obligations to realise the rights of persons with disabilities. Alongside the EU obligations under the CRPD, consideration must be given to the European Disability Strategy 2010 – 2020[[3]](#footnote-3) (EDS) when examining Irish policy. The strategy is based on a joint commitment of EU institutions and its member states. Four of the central components of the EDS are directly aided by expanding this scheme – Accessibility, Participation, Equality and Employment.

Accessibility is a priority in the strategy, and access to goods and assistive devices, including accessible transport are highlighted as essential to achieve the aims of the EDS. Following on from this, the EDS focuses on effective participation, supporting national action on removing all barriers to full and effective participation in life. A mandate is set out to remove obstacles in order to facilitate people with disabilities to participate fully in society as individuals and economic and political actors. This includes provides for choice in how one lives their life, removing administrative barriers to full and equal participation.

There is a commitment to increase the number of disabled people in the open labour market throughout the EU. In order to achieve this aim it is imperative to examine not just the labour market itself, but any and all external barriers that impair people with disabilities’ effective engagement with the labour market, including transport. The commitment here is to identify the challenges posed to people with disabilities from effective participation in the labour force, and to provide comprehensive remedies to them.

# National Standards

In revising the eligibility criteria for this tax relief scheme, the principles set out by the National Disability Strategy must be considered. The high level goals of the Strategy are focused around themes of equal citizenship, independence and choice, participation and maximising potential.[[4]](#footnote-4)

The first of these themes highlights the need for adequate income, and through this facilitating full and equal participation in the labour force. This aim, like many of the others in the Strategy, are only realised when there is effective access to appropriate transport for people with disabilities.

Objective 2(a) of the National Disability Strategy Implementation Plan[[5]](#footnote-5) stipulates a need to develop specific welfare initiatives to facilitate people with disabilities entering the workforce. It is suggested that in order for these schemes to be most effective, the mechanisms by which financial aid is given should be flexible in order to best meet the needs of the people, and of their employers. Tax relief for vehicle adaptation is a significantly more flexible mechanism by which to facilitate this.[[6]](#footnote-6) In order to achieve the goals set out a wide program of strategies and reforms is necessary. Special capital expenses associated with disability should not be regarded as true economic consumption, and should be deducted from the tax base to ensure horizontal equity in the tax system. Furthermore, tax payers facing large non-discretionary expenses face fiscal hardships that are not experienced by the majority of the population. At the point at which a certain level of financial independence is secured, these hardships are best addressed using the tax system as an instrument of social policy. The principle of social equity in tax is a concrete justification for the Drivers with Disabilities (tax relief) scheme, and highlights the importance that it be maintained, and where possible expanded.

The scheme as it stands excludes a number of people with disabilities who would benefit greatly from it. This group contains upper limb amputees, but also various other impairments. Financial support for adaptation is one of the most effective mechanisms for empowering people with disabilities to obtain a vehicle, however when the eligibility criteria for this mechanism is severely restricted, the efficacy of the system becomes undermined.

In the National Disability Survey undertaken in 2006, 18% of adults with disabilities surveyed, living in private households (325,000), reported that the reason for not using private transport was cost, and 22% of people with disabilities reported that the main reason for not using private transport was that the vehicle would need to be adapted.[[7]](#footnote-7) However, a much more significant reason for not using private transport reported was difficulty getting in and out of a vehicle (47%) and the need to have someone accompany them (44%). From these statistics, it would seem that if the eligibility criteria for tax relief were expanded, there would not be a significant increase in the numbers applying, so the costs of extending the scheme are likely not to be excessive.

# Comparative research: Cyprus, France, the United Kingdom and New Zealand.

There is no universal standard to assess the need for support in vehicle modification. Certain examples can be drawn from other nations who are committed to the CRPD.

Cyprus uses both a tax relief system and grant system to provide financial support to disabled drivers and passengers. According to both schemes beneficiaries are persons aged between 18-70 years who have severe disabilities in the upper and / or lower limbs, or severe visual disability. The classification specifies that someone who is unable to use (through any reason) 39% of his or her upper limbs, would be entitled to vehicle adaption.[[8]](#footnote-8)

In the UK and France, a functional test is applied to financial support for vehicle adaptation which is not based on specific medical criteria, but on a person’s functional ability to carry out actions related to driving a vehicle or being a passenger in a vehicle. The French regulation specifies that an eligible person must experience absolute difficulty in performing one essential activity (ie cannot perform the activity independently) or severe difficulty (ie compared to a non-disabled person) in performing two essential activities as follows:

*Mobility (stand up, walk, move around unaided ...)*

*Personal care (bathing, toileting, dressing, meals ...)*

*Communication (speaking, hearing, seeing, using communication devices and techniques)*

*Ability to identify and protect her or her interests (orientation in time, move in space, manage security, control behavior in relationships with others).[[9]](#footnote-9)*

This approach would again expand the people eligible for VRT relief to include upper arm amputees, and certain people with cognitive impairments and neurodisabilities.

The most notable language to consider is found in New Zealand’s policy on an assisting with vehicle modifications, where priority is given to the severity of the disability – and financial assistance is provided with regard to the impact it would have on the person’s quality of life.[[10]](#footnote-10)

# Conclusion and Recommendations

Our first recommendation would be to expand the scheme to cover any person with a disability who requires the adaptation of a motorised vehicle due to disability. Such a reform is particularly important given that this tax relief is currently the only financial support available to people with disabilities to adapt a vehicle for their use. This reform should be undertaken in the spirit of the CRPD, along with the standards set out in the European Disability Strategy and the National Disability Strategy, to facilitate greater access to employment and greater inclusion in the community for people with disabilities in Ireland. In developing new eligibility criteria for the scheme, regard can be had to the qualifying criteria used in Cyprus, France and New Zealand, as described above.

One option from a financial perspective to keep the costs of extending this scheme manageable might be to consider increasing the number of years that a person has to wait before re-applying for tax relief on a new vehicle, while expanding the list of who can apply. Under the current scheme, an applicant can reapply for tax relief on a new vehicle every 2 years[[11]](#footnote-11) – this could potentially be extended to 4 or 5 years, which would limit the number of applications and cost of granting the relief. If cost is a significant concern here, this recommendation could provide the most equitable solution. The CDLP greatly appreciates the opportunity to have made this submission to the Oireachtas Committee and remains at the disposal of the Committee for any further queries on this matter.

1. Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (2010/48/EC), OJ L 23, 27.1.2010. [↑](#footnote-ref-1)
2. National Disability Strategy Implementation Plan, Page 8, UN CRPD, - <http://www.justice.ie/en/JELR/NDS_ImplementationPlan_FINAL.pdf/Files/NDS_ImplementationPlan_FINAL.pdf> [↑](#footnote-ref-2)
3. <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52010DC0636> accessed on the 12/02/15 [↑](#footnote-ref-3)
4. Chapter 2, National Disability Strategy Implementation Plan, available at: <http://www.justice.ie/en/JELR/NDS_ImplementationPlan_FINAL.pdf/Files/NDS_ImplementationPlan_FINAL.pdf> [↑](#footnote-ref-4)
5. Ibid, Chapter 2, Page 7. [↑](#footnote-ref-5)
6. Linkow, Barrington, Bruyère, Figueroa, & Wright, Leveling the Playing Field, Attracting, Engaging, and Advancing People with Disabilities, RESEARCH REPORT R-1510-12-RR, Cornell ILR (2013) [↑](#footnote-ref-6)
7. Central Statistics Office, National Disability Survey, Volume 2, Chapter 4, available at: <http://www.cso.ie/en/media/csoie/releasespublications/documents/otherreleases/nationaldisabilityvol2/Chapters1-5.pdf> [↑](#footnote-ref-7)
8. Details on this scheme can be accessed through:

<http://www.disability-europe.net/dotcom?term%5B%5D=191&term%5B%5D=195&term%5B%5D=170&view_type=detail_list> accessed on 12/02/2015. [↑](#footnote-ref-8)
9. Details on this scheme can be accessed from Disability Compensation Fund:

<http://vosdroits.service-public.fr/particuliers/N14201.xhtml> accessed on 12/02/15. [↑](#footnote-ref-9)
10. Priorities are as follows 1. The severity of the disability 2. the contribution the vehicle or equipment would make to the applicant’s quality of life – New Zealand Vehicle Modification Scheme [↑](#footnote-ref-10)
11. Tax Relief (Disabled Drivers) 1994 SI 353 of 1994, section 8(4)-(5). [↑](#footnote-ref-11)