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**Disability Legal Information Clinic**

**Centre for Disability Law and Policy**

**and Free Legal Advice Society, NUI Galway.**

**Report on the Voting Rights for Blind and Visually Impaired People in Ireland (2012)**

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**The Disability Legal Information Clinic is a joint venture between the Centre for Disability Law and Policy and the student run Free Legal Advice Society in NUI, Galway. The clinic was launched in 2011. The clinic’s main goal is to provide a drop-in information service on legal issues related to disability. The clinic also aims to provide a research resource for practitioners and organisations on aspects of disability law.**

Table of Contents

[Introduction 3](#_Toc320268488)

[I. Current Irish Position 3](#_Toc320268489)

[A. Attending a polling station 4](#_Toc320268490)

[B. Postal Voting 5](#_Toc320268491)

[C. Current Ireland Policy – Sectoral Plan under the Disability Act 6](#_Toc320268492)

[II. European Convention on Human Rights 7](#_Toc320268493)

[IV. International Best Practice on Independent Voting for Blind and Visually Impaired People 10](#_Toc320268494)

[V. Possible Alternatives for Ireland 11](#_Toc320268495)

[Conclusion 13](#_Toc320268496)

# Introduction

In a democratic society the right to vote independently, and the right to vote by secret ballot are seen as basic rights. These rights are currently not afforded to people who are blind or visually impaired under the Irish electoral system, as they must vote through a companion. There are however, alternatives available and as The National Council for the Blind of Ireland (NCBI) [[1]](#footnote-1) have highlighted the current system is no longer appropriate or acceptable given these alternatives. The alternatives available range from Internet voting or telephone voting to a using tactile ballot template. The latter seems to be the best option for both voter and state/government as it preserves anonymity, is simple to use and cost effective.

First, this paper aims to set out the current Irish position on voting rights and how these apply to blind or visually impaired people. Secondly, it will contrast the current position in Ireland with standards contained in the European Convention on Human Rights and the UN Convention on the Rights of Persons with Disabilities. Finally, it will highlight some examples of international best practice in ensuring blind and visually impaired people can vote independently, with a view to making recommendations for future action in this area in Ireland.

# I. Current Irish Position

Both constitutional provisions and legislation currently govern this area. It is currently the responsibility of The Department of Environment, Community and Local Government to oversee elections and voting. The key piece of legislation in this area is the Electoral Act 1992. Under this legislation voters may choose to either attend a polling station to vote or cast their ballot by postal vote. The current Irish position relating to blind or visually impaired voters will be examined for both options.

### A. Attending a polling station

The provision under the 1992 Act that is most relevant to blind and visually impaired voters is s103. This section also relates to, what the Act refers to as ‘incapacitated or illiterate voters’, when they wish to vote at the polling station Under this section a voter may vote using a companion as long as they satisfy the presiding officer that their sight is so impaired that they would be unable to vote otherwise. This section also contains the oath that the voter must swear in order to vote[[2]](#footnote-2).The wording of the oath is as follows, ““I swear by Almighty God (*or* — do solemnly, sincerely and truly declare and affirm — *as the case may be*) that my sight is so impaired (*or* — that I am so physically incapacitated *or* — that I am unable to read or write to such an extent — *as the case may be*) that I am unable to vote without assistance” . After swearing the oath a voter may choose a companion to help them vote[[3]](#footnote-3). The criteria set out for the companion is that they are not running in the election or an agent of any of the candidates and that they are over 16. A companion can only mark two ballot papers at any election. It is also stated under s103 that if a voter refuses to take the oath that s103 will not apply and this implies that a voter may not then be helped by a companion and therefore could not vote under the current system. The exclusion of voters who do not take the oath is not expressly stated in the Act but would appear to be the only possible outcome.

Article 16 of the Constitution may offer some clarification on the issue of an elector refusing to take the oath. It states that all citizens that are over the age of 18 ‘who are not disqualified by law and who comply with the provisions of the law relating to the election of members of Dáil Éireann, shall have the right to vote.’ This could be interpreted to mean that if a blind/visually impaired voter who intends to vote at a polling station refuses to take the oath under section 103 they are not complying with the law and therefore forfeit their right to vote.

A voter may also ask the presiding officer at the polling station to act as their companion and mark the ballot paper for them as they request.[[4]](#footnote-4) However a presiding officer can refuse the request if it is made within two hours of the poll closing and the officer feels that for them to assist the voter would obstruct other voters and would interfere with the officers duties.[[5]](#footnote-5)

### B. Postal Voting

Postal voting is dealt with under Part XIII of the 1992 Act. In order to vote in this manner a voter must apply to their local city or county council each year. However, once a voter is registered on the postal voters list they will be automatically sent out an application form each year.[[6]](#footnote-6) Voters must mark their ballot paper, sign a receipt and seal the envelope provided to case their ballot. The envelope is then returned to the returning officer. It must be noted however that the ballot issued to postal voters is ‘indistinguishable from’ the ballot used at the polling stations and therefore a blind or visually impaired voter still cannot vote without help. The Act states that voters under Part XIII and those deemed to be special voters (those who cannot attend the polling station due to a physical disability or illness) can only vote in the manner set out under the Act. According to s.80.4 the provisions of s103 do not apply to a special voter and this means that a special voter does not have the right to request that a companion marks his ballot paper for him.

In 2006, the Department of the Environment, Community and Local Government published the Sectoral Plan under the Disability Act 2005[[7]](#footnote-7) in order to give effect to the provisions of that Act. The plan dealt with accessibility of polling stations, providing information on registering to vote and voting in elections in forms that were accessible to people with disabilities. The Plan refers to a large version of the ballot paper being displayed at polling stations however it simply reiterates the law under s103 of the Electoral Act 1992 regarding blind or visually impaired voters. Section 4.20.3 of the 2006 Plan discusses the accessibility of electronic voting machines for persons in wheelchairs and persons with visual impairments and notes that ‘the feasibility of providing a facility to allow independent electronic voting by visually impaired voters is being examined.’[[8]](#footnote-8) However, the electronic voting machine scheme was discarded in the years following the publication of the Sectoral Plan, and as such no progress has been achieved to date on allowing independent voting for visually impaired people on electronic voting machines. It could be argued that it would have been relatively easy to produce a template that would fit over an electronic voting machine to allow independent voting, or to produce a machine that accommodated visually impaired people. However, now that e-voting has been discarded it is even more imperative to develop new provisions for visually impaired voters to ensure they can vote independently.

### C. Current Ireland Policy – Sectoral Plan under the Disability Act

The Department’s 2009 Progress Report on the Sectoral Plan under the Disability Act 2005[[9]](#footnote-9) reported that the objective of providing accessible information leaflets regarding registration and voting, as set out in the 2006 Plan, had been achieved. Such information leaflets, in accessible formats, have been made available at public locations such as local authorities and public libraries, according to the Progress Report. The 2009 Report also stated that updated guidelines had been produced in order to assist returning officers to enable persons with disabilities to vote ‘as far as practicable’[[10]](#footnote-10) at local polling places. These guidelines also include practical steps that can be taken to ensure a safe and supportive environment for such electors. No mention of the progress of electronic voting machines is made for the aforementioned reason. The Progress Report does not discuss the option of providing a template for blind and visually impaired voters as a step that could be taken to provide a supportive environment for electors at polling stations.

Under the current legislation there is only one method of voting available for visually impaired voters, companion voting. Neither the plan, the progress report or the provision for postal voting do anything to remedy this and so it remains that blind and visually impaired voters cannot vote independently. This situation is not satisfactory and international obligations and best practice must be examined to discover the best possible remedy.

# II. European Convention on Human Rights

The European Convention on Human Rights (ECHR) is an international treaty of the Council of Europe. The Convention aims to protect what are called the fundamental freedoms. These include the right to life, liberty and privacy. Ireland signed the Convention in 1953. However, the ECHR Act in 2003 gives it a more significant status under Irish law and reaffirms Ireland’s obligations.

It is stated in Article 3 of the European Convention on Human Rights that “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot”. This clearly established the right to vote by secret ballot under the Convention. The use of an assistant to vote arguably violates the right to vote by secret ballot as stated in Article 3. There is very little case law from the European Court of Human Rights on the matter. However, the court has highlighted that the phrasing of Article 3 differs from others and it considers that this was an effort to emphasise that Article 3 requires states to take positive measures as opposed to merely refraining from interference[[11]](#footnote-11). It is also stated in that case that in any democratic state the presumption must be in favour of inclusion with regards to voting.

The Court has also clearly stated, in another case, that the removal of voting rights without individualised evaluation and solely based on disability is not compatible with the legitimate grounds for restricting the right to vote and is therefore, clearly a violation of Article 3.[[12]](#footnote-12) The court’s statements indicate that the ECHR may impose obligations on states to take positive steps toward ensuring all those eligible to vote can and do so by secret ballot. This could be interpreted as an obligation on states to provide the necessary facilities to enable people to vote and this would include provisions for visaually impaired voters.

# **III. UN Convention on the Rights of People with Disabilities**

The UN Convention on the Rights of People with Disabilities (CRPD) commits all those who are signatory’s of it to ensure that people with disabilities enjoy their rights fully and on an equal basis with others. Ireland is a signatory of the Convention however, it has not yet ratified it. Ireland has not yet ratified the Convention because of the need to update existing law. It is believed that the CRPD will be ratified when the Mental Capacity Act is published. [[13]](#footnote-13) The Convention was ratified by the European Union in 2011. This places obligations on Member States of the EU similar to those applied if they had ratified it. This along with Ireland’s commitment to ratification reaffirms their obligations under the Convention.

Article 29 of the UN Convention deals with participation in political and public life. The Convention on the Rights of People with Disabilities (CRPD) clearly guarantees the right of political participation, including the right to vote and stand for election. These rights apply to all people who satisfy age and citizenship requirements of a given electoral system, including people with disabilities, without discrimination.

The Committee on the Rights of Persons with Disabilities is a body of independent experts that monitors the implementation of the Convention by states[[14]](#footnote-15). In their concluding observations to Tunisia[[15]](#footnote-16), where assistance voting is also the practice, they clearly stated that legislation needed to be adopted to ensure that people with disabilities could exercise their right to vote on an equal basis with others. If voters who are blind or visually impaired cannot vote by secret ballot then they are undoubtedly not on an equal basis with others.

The Committee in their concluding observations to Spain recommended that all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others. These include people with mental, sensory, intellectual, cognitive, or physical disabilities who may need adjustments and forms of support, such as ramps, Braille documents or personal assistants, to have equal access to the democratic process.[[16]](#footnote-17) This is a clear indication that the Irish provisions will need to be updated in order for them to comply with the Convention and that making a tactile ballot template available may be inevitable in order for Ireland to fulfill their obligations.

Legal capacity is dealt with under Article 12 of the CRPD. It gives people with disabilities the right to equal recognition as full persons before the law. It also imposes a positive duty in the state to ensure that barriers are removed and that supports are in place for people with disabilities to enjoy and exercise this capacity.[[17]](#footnote-18) This is also an indication that Ireland must update its provisions on voting for people who are blind or visually impaired as a the system that is currently in place is clearly not allowing them to be fully recognised as equal or allowing them to fully exercise their legal capacity.

The right to political participation by people with disabilities applies in states that have not ratified the CRPD, by virtue of their obligation to guarantee to persons with disabilities all rights recognised in the Universal Declaration of Human Rights, including the right to take part in the government of one’s country, and universal and equal suffrage (UDHR Article 21; see also ICCPR Articles 2, 25 and 26).[[18]](#footnote-19)

# IV. International Best Practice on Independent Voting for Blind and Visually Impaired People

Many countries worldwide have now adopted measures to ensure blind and visually impaired voters are able to vote independently. In the Second European Disability High Level Group Report on Implemetation of the UN Convention on the Rights of Persons with Disabilities it was noted that in the UK each polling station now has a special “tactile” voting device. This report also notes that Austria provides a stencil for ballot papers that uses tactile paving to enable blind or visually impaired voters to vote independently. Malta is also noted to provide a ‘perforated template’ to voters with visual impairments.

In the initial State reports to the Committee on the Rights of Persons with Disabilities it was noted that Germany provides a ballot template and that the Australian Electoral Commission has a number of alternatives available to make voting more accessible including the use of telephone voting. Telephone voting was used in Australia in the 2010 federal election to ensure blind or visually impaired voters could enjoy the right to vote by secret ballot.

In 2002, International Foundation for Electoral Systems (IFES) worked with the Ghana Association of the Blind and the Ghana Electoral Commission to design and test pilot a tactile ballot guide, to enable blind voters to vote independently and in secret.[[19]](#footnote-20) In 2010 it assisted the Association of Blind and Partially Sighted People in Kosovo create tactile ballots.

# V. Possible Alternatives for Ireland

The NCBI undertakes a detailed examination of the alternatives in its article and debates the merits of each method.[[20]](#footnote-21) Firstly it explores the option of making the ballot paper available in Braille or a large print format[[21]](#footnote-22). This method would enable voters with visual impairments to vote independently however their vote may not be secret as their ballot is distinguishable from others. This creates a situation where the voter could be identified especially if voting in a polling station where few, if any other, similar ballots are cast.

Internet voting is also an option that is mooted by the NCBI[[22]](#footnote-23). This would require voters having access to a computer either in a public library or in the polling station and requires a high level of computer literacy among voters. It is because of this and the security concerns associated that this option is not favoured. Another voting option that relies on technology is telephone voting. To avoid any security concerns, voters are given a unique PIN to ensure votes cannot be tampered with. The difficulties with this method lie in the casting of the ballot, as voters must have a touch-tone telephone or the system must be enabled with high quality voice recognition software.

As the most commonly used method internationally the tactile ballot template seems to be the best option for all[[23]](#footnote-24). The template can be placed on a ballot paper and fixed in place. A ballot template, also known as a tactile voting device, is a plastic template that fits neatly over the ballot paper and can be re-used. The template can attach to the ballot paper with an adhesive that will not mark the ballot and the details of the candidates are either in Braille or raised so the details can be identified by touch. Flaps cover each of boxes on the paper where the vote is to be marked and are numbered so voters can tell which flap corresponds to which candidate. When voting an individual simply lifts the flap to mark the box and when they have finished the template can be removed and the ballot placed in ballot box like any other.

The template can also take the form of a cardboard folder. The ballot paper can be inserted into the folder and the folder has a similar layout to the template for candidate details etc. To ensure the ballot is placed into the folder properly the top right hand corner of all ballots are cut off. This both preserves the right to vote by secret ballot and also allows voters to ensure that the ballot is properly positioned. This option is seen as the simplest, for both voters and election officials, and also the most cost effective. The NCBI states in its research that this could be the most effective method of securing independent voting for blind and visually impaired people if electoral officials were given proper training in how to use the template.

# Conclusion

Following an examination of the current Irish position, international human rights standards, international best practice and the NCBI report it would seem that a tactile ballot template or folder is the best available alternative for voters with visual impairements in Ireland. It is also clear that Ireland may soon be obligated under international law to review the current system and that a ballot template is the best option to improve that system and to ensure equal voting oppurtunities for voters with visual impairments. For these reasons, we recommend that the Department of the Environment, Community and Local Government take these issues on board and address this as a matter of urgency in the implementation of its commitments to people with disabilities under the Sectoral Plan prepared in 2006.

1. ‘Voting for All’, (National Council for the Blind of Ireland, 2011?) <<http://www.ncbi.ie/news/public-policy-and-campaigns/voting-for-all>> accessed 16/3/2012 [↑](#footnote-ref-1)
2. The Electoral Act 1992, s103(2) [↑](#footnote-ref-2)
3. The Electoral Act 1992, s103(3) [↑](#footnote-ref-3)
4. Electoral Act 1992, s103(5) [↑](#footnote-ref-4)
5. Electoral Act 1992, s103(6) [↑](#footnote-ref-5)
6. Department of the Environment, Community and Local Government. <http://www.environ.ie/en/Publications/LocalGovernment/Voting/FileDownLoad,1896,en.pdf> visited on 13/2/12 [↑](#footnote-ref-6)
7. Department of the Environment, Community and Local Government. <http://www.environ.ie/en/LocalGovernment/LocalGovernmentAdministration/SectoralPlan/PublicationsDocuments/FileDownLoad,2011,en.pdf> visited on 13/2/12 [↑](#footnote-ref-7)
8. *Ibid.* pp.50-51 [↑](#footnote-ref-8)
9. Department of Environment, Community and Local Government. <http://www.environ.ie/en/LocalGovernment/LocalGovernmentAdministration/SectoralPlan/PublicationsDocuments/FileDownLoad,22504,en.pdf> visited 13/2/12 [↑](#footnote-ref-9)
10. *Ibid.*  [↑](#footnote-ref-10)
11. *Hirst v. The United Kingdom* App no. 74025/01 (ECHR 06 October 2005) [↑](#footnote-ref-11)
12. *Kiss v. Hungary* App no. 38832/06 (ECHR 20 May 2010) [↑](#footnote-ref-12)
13. See <<http://www.rightsnow.ie/go/news/shatter-long-on-promises-short-on-detail-at-ireland-s-un-rights-review>> accessed 16/3/2012 [↑](#footnote-ref-13)
14. Available at <<http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>> accessed 16/3/2012 [↑](#footnote-ref-15)
15. Available at <<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session5.aspx>> accessed 16/3/2012 [↑](#footnote-ref-16)
16. Letter from Human Rights Watch and the Mental Disability Advocacy Center to Members of the Venice Commission [↑](#footnote-ref-17)
17. IDA CRPD Forum, Principles for Implementation of CRPD Article 12 [↑](#footnote-ref-18)
18. World Network of Users and Survivors of Psychiatry, Submission for OHCHR Thematic Study on Political Participation, (October 15, 2011) [↑](#footnote-ref-19)
19. See <<http://www.ifes.org/Content/Publications/Press-Release/2002/Ballot-Guide-Developed-for-Blind-Voters-in-Ghana.aspx>> accessed 16/3/2012 [↑](#footnote-ref-20)
20. ‘Voting for All’, (National Council for the Blind of Ireland, 2011?) <<http://www.ncbi.ie/news/public-policy-and-campaigns/voting-for-all>> accessed 16/3/2012 [↑](#footnote-ref-21)
21. Ibid at para 9 [↑](#footnote-ref-22)
22. Ibid at para 10 [↑](#footnote-ref-23)
23. Ibid at para 12 [↑](#footnote-ref-24)