



**LAW REFORM**  
COMMISSION/COIMISIÚN UM  
ATHCHÓIRIÚ AN DLÍ

**EMBARGO: MIDNIGHT WEDNESDAY 9<sup>TH</sup> SEPTEMBER 2020**

**LAW REFORM COMMISSION PUBLISHES  
DISCUSSION PAPER ON THE IMPLEMENTATION OF INTERNATIONAL  
OBLIGATIONS**

**THURSDAY 10TH SEPTEMBER 2020:** The Law Reform Commission has today published a *Discussion Paper on Domestic Implementation of International Obligations*. The Paper comprises the second and final element of the Commission’s research on the domestic implementation of Ireland’s international obligations. The publication will be marked by a YouTube virtual launch comprising a discussion between Professor Donncha O’Connell and Commissioner Raymond Byrne, who were co-ordinating Commissioners for this project.

The first element of the project was the publication in 2018 of a *Draft Inventory of International Agreements Entered into by the State* (LRC IP 14-2018), which lists the 1,400 international agreements that the State has either ratified or signed, organised under 30 subject headings. The 2018 Draft Inventory and today’s Discussion Paper differ from many other Commission publications in that they are primarily descriptive and do not involve recommendations for law reform. The Commission hopes that the Paper may be of practical use to policy makers, the Oireachtas, statutory bodies, NGOs and academics.

The Discussion Paper:

- describes the development of Ireland’s active participation in the international law community since 1922, which has involved ratification of over 1,400 international agreements (listed in the 2018 Draft Inventory), including the leading global and regional human rights treaties and conventions as well as those concerning a wide range of other matters such as international trade, mutual assistance in criminal law enforcement, peaceful settlement of disputes, nuclear disarmament, public health, refugees, and succession law;
- discusses the process involved in implementing international agreements, including the provisions in Article 29 of the Irish Constitution 1937 that require the approval of the Oireachtas before any international agreement becomes part of Irish law (the “dualist” approach to international law);
- discusses examples of best practice in ratifying international agreements, including the use of policy tools, such as a “Roadmap to Ratification” and Regulatory Impact Analysis (RIA), which set out clear and transparent pathways towards implementing the obligations in those agreements in our national law; and
- describes the role played by the Department of Foreign Affairs and Trade, the Oireachtas, the courts, the Irish Human Rights and Equality Commission, NGOs and international monitoring bodies, which ensure that the highest possible standards are applied in the ongoing implementation of Ireland’s international obligations.



On the international stage, Ireland was a founding member of the Council of Europe in 1949, became a member of the UN in 1955, and became member in 1973 of what is now called the European Union. Membership of these international organisations has had a profound effect on Irish law. Indeed, the century since Ireland's independence has coincided with the most active period of international treaty-making in history. In the second half of the 20th century and the first two decades of this century, major areas of international law that were previously based on custom and practice (customary international law) are now available in treaties, the equivalent of legislation or codes in the national or domestic context.

**Ireland has ratified key UN human rights Conventions and those on international arbitration, international public health (WHO) and intellectual property**

Ireland has ratified key UN human rights Conventions, including the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), the 1989 Convention on the Rights of the Child (UNCRC) and the 2006 Convention on the Rights of Persons with Disabilities (UNCRPD).

Ireland has also ratified more than 1,000 other multilateral and bilateral treaties on subjects such as employment law, intellectual property law, international arbitration and peaceful settlement of disputes, marine and maritime law, mutual assistance in criminal law enforcement, nuclear disarmament, public health, refugees, and succession law.

Specific examples discussed in the Paper published today by the Commission include:

- a detailed Case Study on the process leading to the ratification by Ireland in 2018 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD);
- the 2019 bilateral Host Country Agreement Between Ireland and the Permanent Court of Arbitration, which deals with peaceful settlement of international disputes, and which reinforces Ireland's strategy as a forum for international commercial arbitrations post-Brexit;
- the World Health Organization's *International Health Regulations* and associated guidance from the European Centre for Disease Prevention and Control, which have assisted Ireland's responses to the Covid-19 pandemic; and
- the World Intellectual Property Organization (WIPO) Conventions on intellectual property law, such as patents, trademarks and industrial designs, which are an important element of retaining investment in digital innovation.

**Pathways to ratification: roadmaps and Regulatory Impact Analysis**

The Paper describes two helpful methods that have been used to provide pathways towards ratifying international agreements.



The first is that the Government may publish a “Roadmap to Ratification.” This usually includes a description of existing legislation that has, in effect, already implemented some elements of a treaty, as well as what legislation is still required to implement other elements. This was used, for example, in the process leading to the ratification in 2018 of the 2006 UN Convention on the Rights of Persons with Disabilities (UNCRPD).

Another useful practice is to publish a Regulatory Impact Analysis (RIA) in advance of both ratification and enactment of domestic legislation. The use of an RIA, which is an element of good regulatory practice, is especially useful in the context of international agreements with an economic or technical component that may involve direct costs for the private sector. RIAs have been used in the context of ratification of marine and maritime international conventions.

The Commission notes in the Paper that Ireland’s general policy approach to ratifying international agreements is that ratification usually occurs only after the enactment of required domestic legislation. This has the advantage that it indicates the serious intent with which Ireland seeks to implement its international obligations. However, it also has the disadvantage that the eventual ratification of an international treaty may take longer than would otherwise be the case, because it is dependent in particular on the allocation of limited parliamentary time to the enactment of the required domestic legislation.

The Paper also notes that while this is the general approach, there are occasions when the State has departed from this practice and ratifies before the enactment of key, identified, legislation. The Commission refers in this respect to examples related to international treaties on intellectual property law and, in the human rights area, in the case of the UNCRPD.

### **Monitoring and compliance mechanisms**

The Paper also discusses the mechanisms that have been developed to monitor and report on compliance with international obligations. This includes the role played by the Department of Foreign Affairs and Trade, which has overall responsibility within the Government for facilitating the ratification of international human rights treaties. The Paper discusses the Department’s role in periodic reviews of specific UN human rights treaties, as well as in the unique process initiated in 2006 by the UN, the Universal Periodic Review (UPR). The Paper also discusses the role played by the Oireachtas. The practice of the Department of Foreign Affairs and Trade is to have all international agreements to which the State is party laid before Dáil Éireann. This provides an opportunity for members of Dáil Éireann to use, for example, Parliamentary Questions to pose important questions as to the ratification and, if ratified, the effect, of international agreements. In addition, under the *European Union (Scrutiny) Act 2002*, all Oireachtas Committees, including the Joint Committee on Foreign Affairs, must be consulted on any EU legislative proposal from the European Commission, whether a proposed EU Regulation or a proposed EU Directive.



The Paper discusses the significant role of the Irish Human Rights and Equality Commission (IHREC), Ireland's statutory National Human Rights Institution (NHRI). IHREC has the highest rating, "A" status, in terms of the relevant international standard, the "Paris Principles." The effect of this "A" status is that IHREC has specific participation rights in UN and Council of Europe processes and mechanisms. For example, in developing its submission to the Second UPR for Ireland in 2015, IHREC partnered with the Irish Council for Civil Liberties (ICCL) to engage in public consultations with civil society organisations and members of the public.

The Paper also discuss the role of non-governmental organisations (NGOs), such as Amnesty International Ireland, the Free Legal Advice Centres (Flac) and the Irish Council for Civil Liberties (ICCL). The most significant role for NGOs in this area is by submitting what are referred to as shadow reports, that is, reports that shadow the national reports submitted by Governments.

The Paper concludes with a discussion of various mechanisms that have been developed under international agreements to accept individual or group submissions and communications. In addition, special compliance monitoring mechanisms have also been developed, for example, in the 2002 Optional Protocol to the 1984 UN Convention Against Torture (OP-CAT). The Programme for Government adopted in June 2020 has reiterated the State's commitment to ratify OP-CAT.

### **Comments at virtual launch of Discussion Paper**

Speaking at the virtual launch of the Paper, Professor Donncha O'Connell who, with Raymond Byrne, acted as co-ordinating Commissioner for this project said:

"This Discussion Paper, together with the Draft Inventory, provides an important baseline study of Ireland's international legal obligations. It underscores the degree to which international law impacts on the domestic legal and political spheres. As such it is intended to broaden the scope of discussion and stimulate a more pragmatic evaluation of a legal and political system that is open to the influence of international law and move on from the somewhat reductive cost-benefit analysis of dualism. It is for others to build on this analysis whether as policy-makers, legislators, jurists, activists or scholars."

**For further information / interview with Professor Donncha O'Connell or other Commission spokesperson contact:  
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## **Background Notes for Editors**

The Law Reform Commission is an independent statutory body. The purpose of the Commission is to keep the law under independent, objective and expert review; to make recommendations for law reform and to make current law accessible for all.

To be successful, law reform must be an inclusive process. As such, the consultation process is of central importance to the Commission's work. Consultation takes several forms:

- preparing Issues Papers to stimulate debate and discussion on the issues under consideration;
- receiving and considering submissions made in response to Issues Papers;
- hosting seminars, roundtable discussions and meetings with interested parties, experts, practitioners and representatives of interest groups.

Our aim is to develop and reform the laws of Ireland to ensure that they are equitable, modern, fair and efficient. We pursue this aim through the production of our consultative Issues Papers (including related public consultative events), final Reports, and our work on Access to Legislation (comprising the maintenance of the Legislation Directory, a collection of over 380 Revised Acts and the Classified List of In-Force Legislation).

Approximately 70% of our Reports have influenced the content of enacted legislation. Our research work is also frequently cited in court decisions and in academic commentary.

The Paper will be available on the Commission's website, [www.lawreform.ie](http://www.lawreform.ie), on **10 SEPTEMBER 2020**.