



DISABILITY BILL, 2001

EXPLANATORY MEMORANDUM

Introduction

The Bill is a positive action measure to advance and underpin the participation of people with disabilities in everyday life. The Bill establishes a framework for:

- accessible public services, public buildings and public information,
- accessible public transport including buses, trains and taxis,
- assessment of needs and provision of related health and personal social services,
- advocacy support and services, through Comhairle,
- sign language interpretation for deaf or hearing impaired people, including a videophone service,
- measures to support the integration of people with disabilities into employment,
- the provision of genetic testing and a moratorium on genetic testing for commercial purposes,
- a Centre of Excellence in Universal Design.

The definition of disability used in the Bill is the same as that adopted in the National Disability Authority Act, 1999, that is — disability relates to a person who is substantially restricted in his/her capacity to participate in economic, social or cultural life on account of an enduring physical, sensory, learning, mental health or emotional impairment.

The Bill gives enhanced powers to the National Disability Authority that will enable it to oversee or undertake disability access audits, monitor implementation of disability access plans, and inspect and monitor to ensure compliance with the legislation.

PART I

PRELIMINARY AND GENERAL

Sections 1 to 5 deal with the short title, commencement, collective citation, general interpretation, meaning of access, the making of regulations and the costs of administering the Bill.

PART 2

ACCESSIBILITY OF PUBLIC BUILDINGS AND SERVICES

Section 6 provides that from 1 January, 2006, public services will be accessible to people with disabilities and to this end information about public bodies and their services will be made available, where practicable, in a format that is accessible. It will be necessary to seek the information in a particular format when requesting it. Information in electronic form (e.g. websites) will, in general, be accessible to people with disabilities. Sign language interpretation for deaf and hearing impaired persons and simplified versions of information leaflets for people with learning disabilities will be available where the information involved has important implications for the people concerned.

Section 7 provides that heritage sites such as parks, heritage buildings, national monuments and protected structures open to the public will be made as accessible as possible so that a fair balance will be struck between the interest of people with disabilities to access these places and the need to preserve their integrity and special character.

Section 8 requires that streets, pavements, parks and other public open spaces developed for the first time by a local authority after 1 January, 2003 will be accessible. Existing provision of this kind will be made accessible no later than 1 January, 2010.

Section 9 places a requirement on public bodies, in general, to purchase goods and services that are accessible to people with disabilities, subject to considerations of practicability, disproportionate cost and unreasonable delay in sourcing the goods or services in question.

Section 10 deals with compliance — public bodies are required to report to the National Disability Authority and the Minister concerned showing compliance with the provisions of Part 2 no later than 30 June, 2006.

PART 3

TRANSPORT SERVICES

Section 11 is a definitional section for Part 3.

Sections 12, 13 and 15 deal with bus services. In general, bus services will be accessible to people with disabilities no later than 1 January, 2010. Operators of services funded by the State must ensure interim levels of compliance so that between 1 January, 2003 and 31 December, 2005 at least 30% of vehicles are accessible and that from 1 January, 2006 at least 60% are accessible. Service providers in the private sector will be required to phase in accessible services on a broadly comparable basis. There will be less onerous requirements in relation to phasing for small operators (i.e. those with five or fewer vehicles). School bus services will be accessible from 1 January, 2015.

Sections 12, 13, 15 and 16 deal with rail services. In general, trains will be accessible no later than 1 January, 2015. Interim levels of compliance require that at least 30% of vehicles must be accessible between 1 January, 2006 and 31 December, 2009 and from 1 January, 2010 at least 60% must be accessible. Generally, train stations will be accessible to people with disabilities no later than 1 January, 2006.

The Minister for Public Enterprise will have power to exclude specified facilities in railway stations, including platforms, from this requirement by regulation. Any facilities so excluded must be made accessible by 1 January, 2020. The Minister will also have power to make regulations specifying standards for access to train carriages, station facilities and train stations.

Sections 14 and 16 deal with large public service vehicle licences. Vehicles that carry at least nine passengers and are licenced for the first time after commencement of the legislation will be required to be accessible. The Minister for the Environment and Local Government will specify by regulation the necessary accessibility standards for vehicles. There is an exclusion for small operators.

Section 17 deals with road passenger transport operator's licence. Applicants for such licences will be required from 1 January, 2003 to have completed a disability awareness training course or to have otherwise acquired an adequate knowledge of disability awareness.

Section 18 deals with taxis. Taxis will be accessible to persons with disabilities not later than 1 January, 2010. The Minister for the Environment and Local Government may make regulations specifying the design standards for accessible taxis.

Section 19 deals with disability awareness training for taxi drivers. Applicants for taxi licences must have completed a disability awareness training course or have otherwise acquired an adequate knowledge of disability awareness. The requirement will come into operation on 1 January, 2006.

Section 20 requires the public body managing an airport to ensure that the facilities provided at the airport, in the terminal building and while going to or from an aircraft are adequate for the comfortable and safe accommodation and transport of persons with disabilities. The requirement will come into operation on 1 January, 2006.

Section 21 deals with Harbour Authorities who must ensure that facilities provided for passengers, for example, at a harbour, in terminal buildings and while going to or from a passenger ship are adequate for the comfortable and safe accommodation and transport of persons with disabilities. Harbours may be excluded from the scope of the provision by regulation where the cost of compliance would be disproportionately high for example, because of the small volume of passengers using it. The requirement will come into operation on 1 January, 2006.

PART 4

HEALTH AND PERSONAL SOCIAL SERVICES PROVIDED BY HEALTH BOARDS

Section 22 is a definitional section for Part 4.

Section 23 deals with assessment of need. On receipt of an application by a person with a disability, a health board must make an assessment of the needs of that person. The assessment of need must be reviewed from time to time and the health board must, as far as possible, involve the person with a disability in the assessment and all information material to it. If the person cannot be engaged in the process, by reason of age, or disability, a representative of the person must be involved instead. Assessment of need and the other provisions of Part 4 will come into operation on 1 January, 2003.

Section 24 deals with services identified as a result of the assessment of need. These services will be provided as soon as possible and to the greatest extent possible. Services may be provided either directly by the health board or indirectly through another service provider.

Section 25 provides for Deciding Officers. These officers of the health board shall make the decisions about the services to be provided as a result of each assessment of need. The officer is required, subject to the consent of the person with a disability, to send a copy of the assessment of need or other relevant information to any other public body that may be providing services to the person concerned.

Section 26 provides for a complaints mechanism in relation to this Part. Independent complaints officers will be designated by the Minister for Health and Children, to investigate complaints made in relation to any assessment of needs and the provision of related services. A person who is dissatisfied with—

- the assessment itself or with the way it was conducted,
- any decision relating to services or any failure to provide services within a reasonable timeframe,

may lodge a complaint with the complaints officer.

The complaints officer will investigate the complaint and try to resolve it informally. If this cannot be done he/she will make a written recommendation to the Chief Executive Officer of the health board, a copy of which will be given to the person making the complaint. The Chief Executive Officer will give effect to the recommendation of the complaints officer, subject to any regulations made by the Minister for Health and Children (see section 30 below) the use of available resources to benefit everyone, including people with disabilities, and the health board's service plan.

In addition to the complaints procedure provided in the legislation, the assessment and related services (whether provided directly by the health board or indirectly through a third party) come within the scope of the Ombudsman Act, 1980 — 1984.

Section 27 gives the complaints officer power to require information for the purposes of his/her investigations.

Section 28 allows the complaints officer to revise his/her finding in the case of mistake or new information.

Section 29 provides for an appeal on a point of law to the Circuit Court in relation to a recommendation of a complaints officer.

Section 30 provides for the making of regulations. The Minister for Health and Children may make regulations to give full effect to this Part of the legislation. In the regulations, the Minister may deal with the way health boards will discharge their obligations in relation to assessments of need and related services; transitional arrangements to apply in the first two years of operation of the Part from 1 January, 2003; services that cannot be provided immediately; and who may represent an applicant for a health service who, by reason of age or disability, cannot represent him/herself.

PART 5

ADVOCACY SERVICES

Section 31 provides that this Part shall come into operation no later than 1 January, 2006.

Section 32 is a definitional section and deals with definitions of self advocacy (*section 32 (1)(a)*); peer advocacy (*section 32 (1)(b)(i)*); group advocacy (*section 32 (1)(b)(ii)*); and personal advocacy (*section 32 (1)(c)*). Comhairle will give support and training in relation to self advocacy, peer advocacy and group advocacy and will establish a Personal Advocacy Service for “qualifying persons”. A qualifying person is defined as—

- a person who, because of his/her disability, is unable to access a service him/herself or would have difficulty accessing it, without the help or support of a personal advocate. The children, as minors, of such an adult would also qualify for the service,
- an adult who is unable to represent him/herself because of his/her disability and where there is a risk of harm to the person’s welfare, health or safety, and
- a minor with a disability where the issues involved are so complex that it would be unreasonable to expect a parent or guardian to act on the minor’s behalf, without the help or support of a personal advocate.

Sections 33 to 35 provide for the establishment of a Personal Advocacy Service in Comhairle. The Personal Advocacy Service will provide help and support to “qualifying persons” in applying for an assessment of needs, obtaining a health service, making a related complaint or in obtaining any other public service to which the person is entitled. Comhairle will appoint a person to be Director of the Service and personal advocates to work with the Director. The Director will be responsible for the management and control of the Service including—

- the manner for dealing with applications for assistance,
- liaising with statutory authorities or voluntary bodies so as to maximise the provision to be made for qualifying persons, and
- training and guidance of personal advocates.

Section 36 outlines the role of the personal advocate. A personal advocate will seek to—

- promote the best interests of the qualifying person in relation to his/her welfare and quality of life,
- help the person to understand options as a result of an assessment of need, the implications of any treatment or therapy, and to give an informed consent, to the greatest extent practicable,

- liaise with institutions providing residential care, and
- help with any necessary coordination between service providers involved with the person.

With the agreement of the qualifying person, a personal advocate will seek to identify any family members or other persons who may be able to assist the qualifying person. In the case of a qualifying person to whom there is a risk of harm, the personal advocate will seek to identify any family member or other person who might be assisted by the personal advocate in representing the interests of the person.

Section 37 deals with access to meetings and information for personal advocates. A personal advocate will have access to–

- any meeting, consultations or discussions which the qualifying person, might reasonably expect to have access, if he or she didn't have a disability,
- any information needed so as to effectively represent the qualifying person,
- day, residential care, or training centres for people with disabilities and to meet qualifying persons there for the purpose of providing representation, support or assistance.

It will be an offence to obstruct or hinder a personal advocate in this work.

Section 38 provides that anyone providing health services on behalf of a public body will be required as a condition of their contract, to fully co-operate with a personal advocate in the course of their work.

PART 6

OTHER SERVICES

Section 39 provides for the establishment of a sign language interpretation service. Comhairle will provide, or arrange for the provision of, a sign language interpretation service which will have two elements:

- a service that provides sign language interpreters to facilitate communication, directly by means of sign language, between service providers and people who are deaf or have a hearing impairment, and
- a videophone interpretation facility so that service providers and people who are deaf or have a hearing impairment can communicate by videophone.

Section 40 requires that a designated telecommunications company (the universal service provider) will provide the telecommunications technology necessary for the operation of this service. Details relating to the operation of these new services may be specified by regulation of the Minister for Social, Community and Family Affairs and the Director of Telecommunications Regulation. The service will come into operation on 1 January, 2006 and will be subject to the availability of the infrastructural, technological and other resources necessary to support it at any particular time.

PART 7

PUBLIC SERVICE EMPLOYMENT

This Part puts the 3% target for the employment of people with disabilities on a statutory basis. The Part includes a sunset clause and its provision will cease to be in force on 1 January, 2010.

Section 41 deals with interpretation for Part 7.

Sections 42, 43 and 44 provide that each public body has an obligation under the legislation to seek to ensure that at least 3% of the people which it employs are persons with disabilities. Each public body will make a report on the extent of its compliance with the 3% employment target each calendar year. The report must be furnished by 31 March of the following year. Where a public body has not complied with this obligation for two successive years or has not reported on the extent of its compliance with the target, the NDA may become involved. The NDA may require the public bodies to adopt measures to help meet the target, such as—

- sponsoring training or education for persons with disabilities, with the intention of qualifying them for particular posts,
- changing the specifications for particular posts to ensure work of equal value to the original posts can be given to people with disabilities,
- giving priority to suitably qualified persons with a disability or holding competitions for recruitment to specific posts which are confined to persons with disabilities.

Sections 43 and 44 also deal with monitoring compliance with the target. Achievement of the target will be measured on a sectoral basis (e.g. the local authority sector, the health sector etc.) and a sectoral monitoring committee will be set up by each Minister to ensure compliance with the target. Each sectoral committee will comprise representatives of the public bodies concerned, people with disabilities and employer and employee interests. The committee will provide a composite report of the extent of compliance in the sector to the Minister and the NDA for each calendar year, no later than 30 June of the following year.

The NDA, not later than 30 September each year, shall submit to the Minister for Justice, Equality and Law Reform and each other Minister, a report based on information provided to it by the sectoral monitoring committees. The report may include recommendations and will be laid before the Houses of the Oireachtas.

Section 45 makes clear that these provisions are without prejudice to the positive action measures permitted in section 33 of the Employment Equality Act, 1998.

PART 8

EXCLUSIONS

Sections 46 to 49 deal with exclusions and provide that nothing in the legislation —

- requires any modification to provide access that changes the fundamental nature of any building, goods, service or information or that of the trade, profession or business of the person providing it,

- requires any modification to provide access that is a risk to health or safety,
- applies to genetic testing carried out for the purposes of a criminal investigation or in the interests of public health.
- confers any right of action in a civil proceeding against a public body for failure to comply with any duty imposed under the Act or affects the extent to which breach by a public body of an existing statutory duty is actionable,
- allows proceedings for damages against the NDA for failure to perform any functions conferred on it by this legislation or the National Disability Authority Act, 1999 or any civil action against the NDA, its Director and staff for anything done or not done in good faith under this legislation or the National Disability Authority Act, 1999.

The functions of the NDA under the National Disability Authority Act, 1999, will not be limited by any provision of the Bill,

PART 9

NATIONAL DISABILITY AUTHORITY: ADDITIONAL POWERS AND MEMBERSHIP

The legislation gives new power to the NDA to monitor and ensure compliance with the legislation.

Section 50 deals with interpretations.

Section 51 deals with the Disability Access Audits. The NDA may require any person or organisation required to comply with the legislation to conduct a disability access audit (or conduct such an audit itself) to monitor or verify compliance with the legislation. The terms of reference for the audit will be prepared by the NDA or by the Minister. The annual report of the NDA will carry details of each disability access audit which it completed during the year in question.

Section 52 deals with Disability Access Plans. If the NDA believes that any person or organisation required to comply with the legislation is not doing so the NDA may require the body to develop a plan of action to achieve compliance or develop such a plan of action itself for implementation by the body concerned.

Sections 53 to 55 deal with assistance to the NDA in conducting disability access audits or plans; codes of practice; and authorised officers.

Section 56 deals with powers of entry and inspection. In order to monitor or verify compliance with the legislation, the NDA may authorise members of its staff to enter any premises or place; examine any building, vehicle, equipment etc.; require the production of records; and otherwise make any enquiries necessary to establish the facts. It is an offence to fail or refuse to comply with a requirement of an officer of the NDA so authorised or to otherwise obstruct or hinder him/her.

Sections 57 and 58 give the NDA power to require information. The Director or an authorised officer may require any person to supply information or attend before him or her to answer any questions relevant to a matter under examination or audit. An order of the Circuit Court may be sought to secure compliance, if necessary.

Sections 59 to 61 cover Membership of the Authority, Advisory Committees and amendment of the National Disability Authority Act, 1999. The legislation provides for changes to the structure of the NDA. The Authority, from 12 June, 2004, will consist of 12 members, representative of people with disabilities (at least 5 members); service providers (at least 3 members); an NDA employee (1 member) and a representative of the Minister (1 member). The quorum for a meeting of the Authority will be 7 with immediate effect. The legislation provides for the more formal constitution of advisory committees of the NDA, with provision for terms of reference; a fee paid chairperson and a vice-chairperson.

PART 10

GENETIC TESTING

The legislation establishes a framework for genetic testing for medical purposes and for medical scientific research and places a moratorium on genetic testing for commercial purposes.

Section 62 deals with interpretation and cesser of this Part on 1 January 2010.

Section 63 provides that genetic testing must be carried out only with the free and informed consent of the person concerned, followed by counselling.

Section 64 deals with disclosure. The disclosure of the result of a genetic test will require the consent of the person whose genetic information is to be disclosed. Disclosure without consent is allowable, if it is necessary to prevent the serious illness or death of another person and reasonable and appropriate steps have been taken to get the consent of the person whose genetic information must be disclosed. It is an offence to disclose genetic information in other circumstances.

Section 65 prohibits the use of genetic testing for commercial purposes. The legislation outlaws the use of genetic testing for employment, insurance or mortgage purposes from 1 January, 2003 to 1 January, 2010.

Section 66 deals with use of family history by insurers. The legislation allows for the setting of financial limits for the use of family history information for life insurance, health insurance, occupational pensions and mortgage purposes. Information about family history collected for these purposes may be used only for processing the application concerned.

Section 67 deals with the genetic testing of employees. If there is a specific health risk in an undertaking and there is a reliable genetic test that will identify employees who are susceptible to the disease, the employer may offer the test to employees, subject to the requirements of consent, disclosure and a prohibition on use by the employer of the results of the test for other purposes related to the persons employment.

PART 11

CENTRE FOR EXCELLENCE IN UNIVERSAL DESIGN

The legislation provides for the establishment of a Centre for Excellence in Universal Design under the aegis of the Department of Justice, Equality & Law Reform, to promulgate standards in universal design.

Section 68 provides for interpretation. Universal design is design that seeks to allow use by everyone, including people with disabilities, to the greatest practicable extent and in the most independent and natural way possible.

Sections 69 and *70* deal with the establishment and functions of the Centre. The Centre will be especially concerned with the application of universal design—

- to electronic systems, and
- the introduction of its principles in courses of instruction for architects, engineers and others who do work affecting the built environment.

There is provision for the Minister to specify any additional focus for the work of the Centre from time to time. The Centre will promulgate any standards it develops by means of guidance documents or a Code of Practice adopted by the NDA.

The Centre will consist of 10 members drawn from relevant public bodies (Departments of the Taoiseach and Justice, Equality and Law Reform, the NDA and Comhairle); people with disabilities; and information technology, architectural and educational specialists. Most members of the Centre will be selected by a competitive selection process and will work in the Centre to develop its expertise and will be remunerated for this work. The Centre will have a Director who will manage the business of the Centre and any staff assigned to the Centre.

Section 71 deals with the preparation and publication of guidance documents by the Centre.

Section 72 permits the Centre, with the consent of the Minister, to enter into public private partnership arrangements for the performance of specified functions.

Sections 73 to *75* relate to strategic plans, reporting requirements and grants to the Centre.

PART 12

MISCELLANEOUS

This part of the Bill, *Sections 76* to *78* deal with miscellaneous items — covenants in leases, offences by bodies corporate and penalties generally.

SCHEDULE

CENTRE FOR EXCELLENCE IN UNIVERSAL DESIGN

This Schedule deals with the requirements under *Section 69* of the Bill with regard to tenure of office of members; vacancies and membership; Director; staff; superannuation; disclosure of interest; non-disclosure of confidential information; membership etc. of Dáil, Seanad Éireann, or European Parliament; Accounts and Audits; Accountability; Seal and prohibition of improper influence.