

**GUIDE
TO THE
DISABILITY ACT 2005**

Department of Justice, Equality and Law Reform

FOREWORD

I am delighted to present this Guide to the Disability Act 2005. This is an updated version of the Guide to the Disability Bill 2004 which was brought out to coincide with the publication of the Bill and the National Disability Strategy in September 2004.

The Disability Act is designed to advance and underpin the participation of people with disabilities in society by supporting the provision of disability specific services and improving access to mainstream public services. It places significant obligations on public bodies to make buildings and services accessible to people with disabilities, provides for sectoral plans in key service areas, requires public bodies to take positive actions to employ people with disabilities and provides for the establishment of a Centre for Excellence in Universal Design.

The Disability Act is a key element of the National Disability Strategy. The Strategy builds on existing policy and legislation including the Employment Equality Act 1998, the Equal Status Act 2000, the Equality Act 2004, the Education for Persons with Special Educational Needs Act 2004 and on the policy of mainstreaming services for people with disabilities.

Overall the Act puts in place a strong framework which seeks to make significant and long term improvements to the lives of people with disabilities. It is evidence of this Government's commitment to a fairer society.

I hope people will find the Guide both user-friendly and informative and that it will facilitate a greater understanding of the important changes the Act has brought about.

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MINISTER OF STATE

DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM

Disability Act 2005

Background

The Disability Act 2005 is part of a framework of Government legislative measures which support social inclusion. Other essential elements in the Government legislative framework are -

- the Employment Equality Act 1998
- the Equal Status Act 2000
- the Equality Act 2004
- the Education for Persons with Special Educational Needs Act 2004
- the Comhairle (Amendment) Bill 2004.

Main provisions in the Act

The Act establishes a basis for -

- an independent assessment of individual needs, a related service statement and independent redress and enforcement for persons with disabilities;
- access to public buildings, services and information;
- Sectoral Plans for six key Departments which will ensure that access for people with disabilities will become an integral part of service planning and provision
- an obligation on public bodies to be pro-active in employing people with disabilities
- restricting the use of information from genetic testing for employment, mortgage and insurance purposes
- a Centre for Excellence in Universal Design.

PART 1: PRELIMINARY AND GENERAL

This Part (sections 1–6) deals with the definition of some important terms used in the Act. It also sets out the arrangements for resourcing the provisions of the Act and deals with routine legal matters, including the short title of the Act. It provides for commencement and empowers relevant Ministers to make orders and regulations for the purpose of the Act. There is provision for a review of the operation of the Act within five years from its commencement.

This part sets out the action that each Minister and certain public bodies (such as the Health Service Executive) must take to finance the services provided under the Act each year. They must allocate funding from the total resources available to respond to the financial requests which arise from the Disability Act, while taking account of the financial requirements of their other functions and responsibilities.

Important terms defined in the Act (section 2)

“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.

“public body” includes Government Departments, local authorities, health boards and semi-state bodies, as well as most other state organisations.

“service” means a service or facility provided to the public by a public body. It includes the use of a public amenity or place, the provision of information, a scheme, allowance or other benefit, a cultural or heritage service and any service provided by a court or tribunal.

Part 1 came into operation on 29 July 2005.

PART 2: ASSESSMENT OF NEED, SERVICE STATEMENTS AND REDRESS

Part 2 establishes a system for the assessment of individual health service needs and, where appropriate, education needs for persons with disabilities over age 18 years. This Part provides a statutory entitlement to -

- an independent assessment of health and education needs
- a statement of the services (Service Statement) which it is proposed to provide
- pursue a complaint through an independent redress mechanism if there is a failure to provide these entitlements.

Important terms defined in Part 2 (section 7)

Persons with a disability entitled to the services in Part 2 are those with a “substantial restriction” which is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significantly disordered cognitive processes, and gives rise to the need for services to be provided continually to the person whether or not a child or, if the person is a child, to the need for services to be provided early in life to ameliorate the disability

“health services” in Part 2 are services provided by or on behalf of the Health Service Executive (HSE) and include personal social services.

“education services” covered by Part 2 are education services for persons with disabilities over 18 years. They include schools covered by the Education Act 1998 or certain educational facilities specified by the Minister for Education and Science.

Purpose of the independent assessment (sections 8-10)

Any person who considers that he or she may have a disability is entitled to apply for an independent assessment of need. The assessment will be undertaken without regard to cost or capacity to provide any services identified in the assessment. Arising from the assessment, the person concerned will be given an Assessment Report.

The Assessment Report will indicate -

- whether a person has a disability
- the nature and extent of the disability
- the health and education needs arising from the disability
- the services considered appropriate to meet those needs and the timescale ideally required for their delivery
- when a review of the assessment should be undertaken.

There is provision for a relative, guardian or personal advocate to apply for an assessment on behalf of a person with a disability. Each person with a disability will be encouraged to participate in their own assessment while taking account of the nature of their disability and their age. This will also include taking note of their views regarding their needs or preferences in relation to the provision of services.

The Act also allows an employee of the Health Service Executive (HSE) to initiate an assessment of need on behalf of a person in certain circumstances.

The Health Information and Quality Authority (HIQA), a new independent body established by the Minister for Health and Children, will set appropriate standards for carrying out the assessment process.

Service Statements (section 11)

Each person found to have a need for disability related services, as a result of the Assessment Report, is entitled to be given a Service Statement. The Service Statement will set out the health and education services that can be provided to the person taking account of -

- the Assessment Report
- eligibility criteria for services
- relevant standards and Codes of Practice
- the practicability of providing the service
- the financial resources available.

A Service Statement may be amended because of a change in the circumstances of the person or a change in any of the above considerations upon which the statement is based. The individual or their advocate will be invited to participate in a review of the provision of services specified in the Statement at intervals determined by regulations.

Exchange of Information (section 12)

There is provision for informing, with the necessary consent of the person concerned, other service providers about the contents of an Assessment Report so as to facilitate access to services outside the health and education sectors.

Educational needs of a child

A child who has a disability may be assessed under the Disability Act or under the Education for Persons with Special Educational Needs Act 2004. If a special educational need is identified as a result of the assessment of a child under the Disability Act, that aspect of the assessment must be referred to the National Council for Special Education or to the Principal of his or her school. Health needs identified in an assessment under the Education for Persons with Special Educational Needs Act 2004 will be dealt with in a Service Statement under the Disability Act.

Planning (section 13)

To assist with ongoing planning and improvement of services, the HSE will keep records of assessments and services provided, levels of unmet needs and the numbers of persons involved. The maintenance of these records will be in accordance with the requirements of data protection legislation. A report will be prepared annually by the HSE for the Minister for Health and Children and will be published.

Independent Redress

Complaints, appeals and enforcement procedures are established under Part 2 so as to provide individual means of redress.

Complaints (sections 14-15)

A person may make a complaint to the HSE about -

- a finding that he or she does not have a disability
- the failure of the assessment to meet the standards set by the Health Information and Quality Authority
- the contents of the Service Statement
- the failure to start or complete an assessment within the required timescales;
- the failure of a health or education service provider to provide a service set out in the Service Statement or to provide it within any timeframes prescribed.

Complaints will be heard by a complaints officer. The complaint will be resolved informally, if possible. If informal resolution is not possible, the complaint will be investigated and a recommendation will issue, which will include a timeframe for the action directed. The recommendation will have regard to the outcome of the investigation as well as other considerations, including the eligibility of the person for the service, the practicality of providing the service and the resources available to the service provider.

Appeals (sections 16-20)

A person may lodge an appeal against a recommendation of a complaints officer. The HSE or education service provider can also appeal a recommendation in relation to the provision of a service.

Appeals will be investigated by an independent appeals officer. If the parties to the appeal agree, an appeal may be resolved by mediation. Otherwise, an appeal hearing will take place and a formal determination will issue.

The appeals officer's determination is final and may only be appealed on a point of law to the High Court.

Enforcement (sections 22-23)

Where a recommendation, a mediated settlement, or an appeals officer's determination is not implemented, the applicant or the appeals officer can apply to the Circuit Court for an enforcement order. The Circuit Court may then order the HSE (or the head of an education service provider) to implement the relevant decision.

Regulations (section 21)

The Minister for Health and Children may, by regulation, establish procedures relating to the matters covered in Part 2, including the assessment process, service statements and the redress procedure.

How will the system be managed?

Statutory officers will be appointed to carry out the principal functions in Part 2.

Assessment officers, appointed by the HSE, will arrange for assessments of need and will be independent in carrying out their statutory functions.

Liaison officers, appointed by the HSE will draw up Service Statements and manage their delivery. They will make contact, if requested, with the providers of public services outside the health and education sectors.

Complaints officers, appointed by the HSE, will be independent in carrying out their investigative functions and will try to resolve a complaint informally or, if this is not possible, will make a written recommendation to the HSE (or the head of an education service provider).

An appeals officer will be appointed by the Minister for Health and Children. The appeals officer will provide independent mediation, appeals and enforcement under Part 2. The appeals officer will have substantial statutory powers to summon witnesses, to enter premises and to obtain information. He

or she will head up an independent office and will have a budget and staff to support him or her in undertaking these statutory functions.

Part 2 will come into operation on a date or dates to be specified by the Minister for Health and Children.

PART 3: ACCESS TO BUILDINGS AND SERVICES AND SECTORAL PLANS

Part 3 places an obligation on public bodies to make their buildings and services accessible and requires the preparation of Sectoral Plans to support continued improvements in six key areas of public service provision. There are complaints procedures with a right of appeal to the Ombudsman.

Public buildings other than heritage sites (section 25)

Public bodies are required to make their public buildings accessible to people with disabilities by 2015. This will require the re-fitting of older public buildings so that they comply with Part M of the Building Regulations.

A Minister may, after consultation with other Ministers and interested parties, make an order to exclude a public building from the scope of these requirements if he is satisfied that the building -

- is being used as a public building on a temporary basis
- will no longer be used as a public building after three years or
- does not justify refurbishment on cost grounds having regard to the use of the building.

The Minister for Justice, Equality and Law Reform may ask the National Disability Authority (NDA) to draw up a Code of Practice to assist public bodies in making buildings accessible. Public bodies will have to comply with the Code as far as possible at the time of new construction, material alteration or extension of a public building or where it would be cost effective for the purpose of giving access to a greater number of people.

Mainstream public services (section 26)

From 31 December 2005 there will be a statutory requirement on public bodies to integrate, where practical and appropriate, their services for people with disabilities with those for other citizens. In some cases, assistance to access the service will be available to people with disabilities, following a request. "Access officers" will be appointed in each public body to co-ordinate these arrangements.

Contracted-in public services (section 27)

From 31 December 2005 public bodies will be required to ensure that goods or services purchased are accessible, unless it would not be practicable or justifiable on cost grounds or would result in an unreasonable delay.

Communications (section 28)

From 31 December 2005 communications by a public body to a person with a hearing or visual impairment must, as far as practicable, be provided in an accessible format, following a request. Information provided electronically must, as far as practicable, be compatible with adaptive technology. Published information, relevant to persons with intellectual disabilities, must be made available in easy to read formats.

Heritage sites¹ (section 29)

From 31 December, 2007 heritage sites under public ownership, management or control and open to the public, must be accessible to people with disabilities. This requirement will not apply if the works involved in making the site accessible would have an adverse impact on the conservation of the site.

Codes of Practice (section 30)

The Minister for Justice, Equality and Law Reform may request the National Disability Authority (NDA) to prepare Codes of Practice specifying what public bodies must do to comply with their obligation to make their mainstream services, information resources and heritage sites properly accessible.²

Sectoral Plans (sections 31-37)

Sectoral Plans give information on the services, facilities and activities which come within the remit of each of six Departments. The plans highlight how the functions of the Departments, and the key bodies which they oversee, serve the needs of people with disabilities and set out a programme for future development. Each plan must include arrangements for complaints, monitoring and review procedures.

Under the legislation six Ministers are required to draw up Sectoral Plans as follows -

¹ Heritage sites include national monuments, heritage buildings, gardens or parks, protected structures, national parks and nature reserves owned by the State.

² The codes of practice, as required under sections 26-29, are in the process of being prepared by the NDA following a request from the Minister.

- the Minister for Health and Children
- the Minister for Social and Family Affairs
- the Minister for Transport
- the Minister for the Environment, Heritage and Local Government
- the Minister for Communications, Marine and Natural Resources
- the Minister for Enterprise, Trade and Employment.

The legislation requires each Minister to publish a plan and lay it before each House of the Oireachtas within a year of the commencement of Part 3. Each plan must be the subject of consultations with representatives of persons with disabilities and submitted to the Oireachtas for approval before it is published. A plan will come into effect only after a resolution approving it has been passed by each House of the Oireachtas. A Minister may amend, replace or revoke a plan, approval for which will be subject to a resolution of each House of the Oireachtas on each occasion.³

Complaints and the Ombudsman (sections 38–40)

Public bodies must appoint “inquiry officers” to process complaints about any failure by a public body to provide access as required by sections 25 to 29 of the Act. Each Sectoral Plan must establish a complaints mechanism for individuals who have not been able to access a service specified in the plan.

Any person who is not satisfied with the outcome of a complaint made in relation to Part 3 may appeal to the Ombudsman. Under the legislation the Ombudsman is given new powers to investigate any failure by a public body to comply with the access requirements of Part 3 or any commitment made in a Sectoral Plan.

Sections 24 and 30-37 came into operation on 29 July 2005.

Sections 25-28 and 38-40 come into operation on 31 December 2005.

Section 29 comes into operation on 31 December 2007.

PART 4: GENETIC TESTING

Genetic testing (sections 41–45)

This Part provides safeguards for the use of information obtained from genetic testing. The provisions aim to ensure that people who may be affected by genetic disorders will not be subject to any unreasonable requirements from an employer or an insurance or mortgage provider. The protections provided are in addition to the

³ Draft Sectoral Plans of all relevant Ministers are currently the subject of consultations.

substantial safeguards for the use of personal information contained in the Data Protection Acts. These new safeguards will be reviewed no later than 2014.

The safeguards provide that –

- genetic testing may only take place with a person's consent, in accordance with the Data Protection Acts
- the results of a genetic test can't be used in relation to insurance, a mortgage, a personal pension or employment
- the person being tested must be made aware of the intended use of the test results and must, as far as possible, be informed about the possible outcomes of the test
- the use of a person's family history for insurance purposes may be regulated by the Minister after consultation with other relevant Ministers, the Data Protection Commissioner and other interested bodies or groups.

Part 4 comes into operation on 31 December, 2005.

PART 5: PUBLIC SERVICE EMPLOYMENT

For many years public bodies have pursued a positive action measure which set a 3% target for the employment of people with disabilities in the public service.

The new system (sections 46-47)

Part 5 gives the 3% target legal status and goes further by -

- allowing each Minister to expand the range of positive actions which public bodies, within his or her area of responsibility, must take for the employment of people with disabilities
- giving a special role to the National Disability Authority (NDA) in monitoring compliance and ensuring implementation.

Ministers may also approve Codes of Practice to assist public bodies.

New structures (sections 48-51)

New structures are also established to ensure greater accountability by public bodies.

The provisions require -

- each Minister to establish a monitoring committee for their area of responsibility

- each committee to include staff and employer interests and representatives of people with disabilities
- the NDA, together with the relevant Minister, to specify measures which a particular public body must take to meet their employment obligations under Part 5
- monitoring committees to make an annual report to the relevant Minister and the NDA
- the NDA to make an overall report on compliance to the Minister concerned and the Minister for Justice, Equality and Law Reform annually and the report to be placed before the Houses of the Oireachtas.

Exceptions

These provisions will not apply to the Defence Forces, the Garda Síochána and Prison Officers.

Part 5 comes into operation on 31 December 2005.

PART 6: CENTRE FOR EXCELLENCE IN UNIVERSAL DESIGN

Creation and functions of the Centre (section 52)

Universal Design is an approach to design and construction aimed at making products and the built environment accessible and usable for everyone, especially people with disabilities. Part 6 provides for the establishment of a Centre for Excellence in Universal Design within the NDA.

It will promote best practice in the design of buildings and products, including computers and other electronic systems. The Centre will also have an important role in supporting the inclusion of the principles of universal design in professional examinations for engineers, architects and other persons involved with the design and construction of our physical and electronic infrastructure.

Part 6 comes into operation on 1 January 2007.

PART 7: MISCELLANEOUS

Broadcasting (section 53)

This section requires that the Broadcasting Commission of Ireland makes rules to ensure that audio-visual broadcast material is accessible to people who are deaf or

hearing impaired and to those who are blind or visually impaired. The section builds on and enhances existing provisions in the Broadcasting Act 2001.

Offences (sections 54–55)

These sections specify persons who may be prosecuted for offences committed under the Act, by whom they may be prosecuted (e.g. the relevant Minister) and the penalties that may be imposed.

National Disability Authority (section 56)

This section provides that the size of the board of the NDA is to be reduced from 21 to 13 members and makes provision to allow payments to board members. It also allows the Minister to appoint to the first NDA board formed after enactment, persons who have served 2 consecutive terms as board members.⁴

Repeals (section 57)

This section repeals sections 17 and 18 of the Equal Status Act in relation to regulations for public vehicles and bus and rail facilities.

Exclusions (section 58)

This section excludes from the scope of the Act any adaptation or modification that would fundamentally alter the nature of the service being provided by a public body.

Part 7 came into operation on 29 July 2005.

THE SCHEDULE

The Schedule to the Act deals with the terms and conditions of appointment of the appeals officer (to be appointed by the Minister for Health and Children under Part 2) and his or her staff.

NOTE: This explanatory guide sets out, in brief, key provisions of the Disability Act for the information of the public and service providers. It is not a legal interpretation of the Act.

⁴ The Minister appointed a Board (13 members) on 29 July, 2005.