

Review of the Operation of the Disability Act 2005

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Context

- The Disability Act 2005 (the Act) is a positive-action measure designed to support the provision of disability-specific services and improve access to mainstream public services for people with disabilities. The Act is one of the key elements of and underpins the National Disability Strategy (NDS), which is the focus of Government policy on disability.
- Section 6 of the Act stipulates: "The Minister shall, not later than 5 years after the commencement of this Act, carry out a review of the operation of this Act". The Act was commenced on 28 July 2005.
- Part 4 of the Act covering sections 41 to 45 on genetic testing, was excluded from the review. Section 44 of the Act provides for a separate review of Part 4 to be initiated not later than 1 January 2014.
- As part of the process of reviewing the Act, Government Departments were requested to examine and submit their observations on the operation of the Act in so far as their Department is primarily concerned.
- A consultation event for Disability Stakeholders was held on 13 April 2010 with the assistance and in the headquarters of the National Disability Authority (NDA). Presentations were made and discussions held at the event on:
 - the context of the review;
 - clarification of its purpose in examining the operation of the Act; and
 - an overview of each Part of the Act under review and how it operates at present.

Information on the review of the operation of the Act, along with a request to submit observations on the review were also circulated to stakeholder organisations following the event.

- This report is a statement of the views received from the sector including Disability Stakeholders, the NDA and Government Departments and contains a synopsis of their observations relating to the operation of the Act.
- All of the issues raised will be examined in detail and a response prepared by the Senior Officials Group on Disability (SOGD), which contains representation from Departments responsible for the operation of the Act.
- The recommendations by the SOGD will form the basis for a consultation process with the National Disability Strategy Stakeholders Monitoring Group (NDSSMG), on which the following are represented:
 - the entire SOGD;
 - the Disability Stakeholder Group (representing all stakeholders);
 - the NDA;
 - social partners (ICTU and IBEC).

- The outcome from the consultation process with the NDSSMG will be submitted to the Minister.
- Other material received which is not directly connected to the review of the operation of the Act will also be examined by the relevant Government Departments.

PART 1: PRELIMINARY AND GENERAL

Contains the definition of some important terms used in the Act; deals with routine legal matter, including its short title and provides for commencement and empowers relevant Ministers to make orders and regulations for the purpose of the Act. It also provides the context (in Section 6) for this review of the operation of the Act and sets the actions that each Minister and certain public bodies must take to finance the services provided under the Act each year.

Sections 1 to 6

2. Interpretation

This section sets out definitions used in the Act.

The definition of "disability" itself in this section is as follows:

“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;

The following is a synopsis of the observations received on the definition of "disability":

- it cannot be fully analysed in terms of effectiveness as the Act has not been fully rolled out;
- the use of 'enduring' is problematic and guidance needs to be provided around it;
- it should be aligned with the definition in the Employment Equality Act as there are difficulties around differing definitions of "disability" in Irish legislation and this can lead to a two-tier system of disability support and be problematic in identifying potential demand for assessments and additional supports;
- as a result of it, children with no diagnosis may be denied services under the Act;
- it has an adult focus - a reference to education should be included to make it more person-focussed;
- it has caused difficulties in reporting under Part 5 in that the 'substantial restriction' defined in section 46 may no longer apply, where people with disabilities have been accommodated to work.

The following is a synopsis of the observations received in relation to other definitions.

“Minister” means the Minister for Justice, Equality and Law Reform¹

¹ except in section 3 where it is the Minister for Health and Children

"Minister" should be amended to reflect the developments since the Act came into force, particularly the transfer of the disability function to the Department of Community, Equality and Gaeltacht Affairs and the establishment of the Office for Disability and Mental Health in the Department of Health and Children. Clearer overall responsibility must be established to ensure coherent implementation and monitoring of the Act's provisions.

"Public body"

This definition, while considered useful in accommodating the changing landscape of the public sector, is considered quite complex resulting in a lack of clarity in identifying whether bodies come under the definition set out in 2(1)(h) (i) and (ii). Also, unlike other enactments, it does not extend to a range of publicly funded bodies which are not established under an enactment or in pursuit of powers conferred by an enactment.

"Service"

This definition does not fully reflect the nature and purpose of public bodies and services. It does not take into account that publicly funded services are often subcontracted to the private and non-profit sectors and are therefore not provided by a 'public body'. In other cases, some public bodies are providing services from buildings for which they do not have ownership.

4. Expenses

Sets out that expenses in administering the Act are to come from moneys provided by the Oireachtas.

The following is a synopsis of the observations received.

The expenses of administering the Act are to come from moneys provided by the Oireachtas. Clarification should be provided regarding the position of substitute cover in the temporary absence of an Officer under the Act. Operational issues have arisen where Officers cannot be replaced under the public service embargo, thus compromising the capacity to meet the statutory timeframes set out in the Act.

5. Provision of resources and extent of provision

The following is a synopsis of the observations received.

A number of submissions expressed concern that moneys allocated under this section may not be used for their intended purpose and that the Act should be stronger on ensuring that resources allocated for the provision of services under the Act are used for that purpose.

The provision should focus on specific supports to meet the needs of people with disabilities and should not include funding to provide mainstream services to people with disabilities which are ordinarily available to people without disabilities.

The requirement to disaggregate expenditure on disability services from the provisions made available for mainstream services is problematic.

The moneys allocated by Ministers under this section should be published in an identifiable manner in the Estimates of their Departments and in the HSE's annual service plan.

6. Review of operation of Act

Sets out that the review of the operation of the Act be completed not later than five years after its commencement.

The following is a synopsis of the observations received.

A number of submissions have requested that provision be made for a defined framework for ongoing review; in particular a five year review of Part 2 and an additional date for review of the Act when it is fully implemented.

This section lacks detail around the scope, nature and purpose of the review and it should be amended to state to whom the outcome of the review is reported and to what purpose.

A review of the Act should be expanded to include a full review of the orders, regulations and commencement orders which underpin it.

This section should state that there is a need for any review to include the views of disability stakeholders.

PART 2: ASSESSMENT OF NEED, SERVICE STATEMENTS AND REDRESS

Provides a statutory entitlement to an independent assessment of health and education needs; a statement of the services which it is proposed to provide; and an independent redress mechanism to pursue a complaint if there is a failure to provide these entitlements.

Sections 7 to 23

7. Interpretation

Sets out definitions specific to this Part of the Act. "Minister" here is the Minister for Health and Children. "Executive" is the Health Service Executive.

The following is a synopsis of the observations received.

"Education service"

The definition should be expanded to include pre-school services offered under the Early Childhood Care and Education (ECCE) Programme to be in keeping with the spirit of the Act which provides that services *"be provided early in life to ameliorate the disability"*

"Substantial restriction" in the definition of 'disability' for the purposes of Part 2

A number of submissions suggest that this definition cannot be fully analysed in terms of effectiveness because the provisions in Part 2 have not fully commenced.

Other issues raised include:

- consideration be given to an additional definition of disability, specifically for children, to take into account the difficulty of defining a disability as *"permanent"* in the case of a child;
- the use of *"continually"* in the definition may be interpreted to exclude acquired disability and episodic conditions, which was not the intention;
- the modification to the definition of 'disability' here may result in certain kinds of functional difficulty arising from the section 2 definition falling outside of this one. Consideration should be given to adding "manual functions" to the list of difficulties set out in 7(2)(a);
- as this definition refers to 'need for services' and the Education for Persons with Special Educational Needs Act 2004 (EPSEN Act) has based eligibility for services on diagnosis, there is some incompatibility between the two assessment processes.

General observations in relation to this Part have suggested that discrepancies in interpreting the legislation in relation to it have resulted in a varied approach to rolling it out at local level, resulting in an increased demand for assessments and diminished resource availability to provide interventions.

8. Independent assessment of need

Provides for the appointment of Assessment Officers by the HSE which are responsible for providing or arranging assessments of need and for involving the National Council for Special Education (NCSE) as necessary. Assessment Officers are independent in performing their functions and assessments must be carried out without regard to the cost or the capacity to provide the service. A written Assessment Report will be compiled and 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 timescale ideally required for their delivery;*
- *and when a review of the assessment should be undertaken.*

A copy of the Assessment Report will be furnished to the applicant, the HSE and, if appropriate, the Chief Executive Officer of the NCSE. This section provides that the person with a disability be encouraged to participate in their own assessment while taking account of the nature of their disability and their age.

The following is a synopsis of the observations received.

A number of submissions highlighted the following:

- The 'independence' of the Assessment Officer is questionable. An independent panel for those carrying out assessments should be established to avoid assessments being influenced by the level of service provision available in a particular area.
- Reporting and accountability relationships between officers and those to whom they report need to be examined to facilitate the statutory independence of the role of the Assessment Officer.
- There is an uneven implementation of and lack of consistent approach to the assessment of need process. The Act does not specify structure, reporting mechanisms or assessment tools which should be used in the process.
- The assessment process involves a significant amount of resources and thus reduces the resources available for service. It may also risk a delay in early intervention which can have a significant impact on outcomes for a child with a disability.

It has been suggested that the requirement to make a determination of a disability may be inappropriate, particularly so when assessing young children. Further to this, pressure is being applied to secure a diagnosis to facilitate access to services, though this is not an entitlement of the Act.

Observations suggested that the assessment of need process should:

- place the individual at the centre of the resource allocation model. This should be the framework around which disability services are organised rather than superimposing this process onto existing models of service;
- highlight the social supports required for the person with a disability and their family, in addition to identifying clinical need;

- clarify the extent to which it should incorporate the needs of an applicant's family. The Act provides only for assessments of applicants and, in some situations, the circumstances of family members must be considered as part of the overall process;
- include an element of intervention to ensure it does not occur at the expense of intervention;
- not be required to have an end point; it may be more beneficial to engage with it as an ongoing process in which intervention can be provided while assessing the applicant over a longer period of time;

It has been highlighted that though the assessment of need regarding health needs is carried out without regard to the cost or capacity to provide a service, the assessment of education need is not being interpreted in this way.

The Act provides for assessment of 'health' needs occasioned by disability. When the Act is applied to older age cohorts it is the 'personal social service' which will be more applicable to older people with disabilities. It has therefore been suggested that this section be examined to ensure such services are covered by the legislation.

Section 8(6) provides that a copy of the Assessment Report be given to the applicant. However, it does not state when this should occur. Regulations (S.I. No. 263 of 2007) qualify this and provide that the Assessment Report and Service Statement are issued to the applicant at the same time. This delay in receiving the Assessment Report has been raised as being in conflict with best practice in communicating with parents or in disclosure of a disability to parents.

It has been suggested that the Act needs to be more prescriptive in outlining what the Assessment Report should contain as reports to date have not adequately represented the intention of the Act.

9. Application for an assessment

Allows any person who considers they may have a disability to apply in writing for an assessment. If the person, because of their disability or age, is not in a position to apply personally, their spouse, parent, relative, guardian, legal representative or a personal advocate appointed by the Citizens Information Board can request an assessment on their behalf. An employee of the HSE may also initiate an assessment. An assessment must begin within three months of the receipt of application and must be completed without undue delay. To avoid duplication of assessments, where an assessment has been made under section 4 of the EPSEN Act, an application cannot be made under this section of the Disability Act and any need for the provision of service identified by this assessment is forwarded to the appropriate person for completion of a Service Statement (see section 11). The executive may refuse an application for assessment if the review period of a previous assessment has not yet expired or if an assessment has been carried out within 12 months before the date of application. However, a person can request a further assessment if there has been a change in their circumstances, if new information has come to light or if there has been a mistake of fact.

The following is a synopsis of the observations received.

More accessible information regarding the application process and increased awareness of the right to apply for an assessment under the Act is required.

The definition of "the person" should be examined. There are issues in relation to disputes which might arise between parents as to whether a child should be assessed. Further concern was expressed in relation to issues which may arise around consent, capacity etc. in the event that the Act is implemented for adults.

Section 9(2)(d) makes reference to "a personal advocate assigned by Comhairle" (now the Citizens Information Board, CIB). This is considered too restrictive as there are other bodies who would be in a position to provide advocacy. As the Citizens Information Board has not rolled out its advocacy service under the Citizens Information Act as originally envisaged this has led to uncertainty about how to deal with applications which may be made by advocates not directly assigned by CIB. It has placed an additional burden on parents to undertake the application process and to pursue any complaints or appeals process which may be required.

Section 9(4) provides for applications to be made by employees of the HSE. Concerns have been raised that this may occur without necessarily obtaining parental consent. In due course, the same concerns would apply in relation to spouses.

Clarification of Section 9(8)(a) has been suggested to more clearly state the position for a child who has a 'material change of circumstances' post 5 years of age.

10. Carrying out of assessments

Provides that assessments will be carried out in accordance with standards determined by a body specified by the Minister for Health and Children.

The following is a synopsis of the observations received.

The Health Act 2007 has amended this section to remove the reference to the EPSN Act 2004 and it has also made it a function of the HIQA (Health Information and Quality Authority) to act as a body standing prescribed by the regulations made by the Minister for Health and Children as set out in this section of the Disability Act.

The Act provides for the development of standards for the assessment of need process. However, no provision has been made for the monitoring or review of such standards.

11. Service Statement

Provides that 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. This statement sets 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; and 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.

The following is a synopsis of the observations received.

That:

- the Act needs to be more prescriptive in outlining what the Service Statement should contain;
- the content outlined under section 11(2) has been inadequate in practice; and
- the quality of Service Statements issued differs across different Local Health Office areas.

In addition, a number of submissions have highlighted that the Service Statement should be required to include detailed information on "unmet needs" in order to ensure that:

- they are amenable to the complaints and redress procedures under section 14(1)(d);
- the review of Service Statements necessarily will encompass these unmet needs and whether there are now available means to provide the outstanding services; and
- provision can be made for these unmet needs to be aggregated and published to establish how service gaps and future service provision may best be addressed.

It was also suggested that section 11(7)(e) should be amended to impose a statutory obligation on the Liaison Officer to furnish reasons to applicants for their decisions not to provide a service by reason of inadequate resources by reference to the approved service plan for the relevant financial year.

12. Exchange of information

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

The following is a synopsis of the observations received.

A relevant legislative citation to cover the ECCE scheme preschools as bodies with whom a Liaison Officer can exchange information should be inserted.

A number of submissions have suggested that a system needs to be put into place to ensure that urgent needs identified are met with an immediate response.

13. Maintenance of records by Executive, etc.

To assist with ongoing planning and improvement of services, this section provides for the maintenance of records of assessments and services provided, levels of unmet needs and the numbers of persons involved. The maintenance of these records is in

accordance with the requirements of data protection legislation. A report is prepared annually by the HSE for the Minister for Health and Children and is published.

The following is a synopsis of the observations received.

As this section was key to what disability stakeholders sought from the Act and was agreed by Government during the consultation process, greater enforcement to meet the obligations under this section is required.

The requirement in section 13(2) to produce a report on aggregate needs, to include indications of time periods, sequence of provision and estimate of cost of provision should be removed and should be replaced with a more general requirement to report on unmet need, workforce planning and service planning issues.

The information on unmet need should be compiled and aggregated by region to allow for more effective planning.

Provision should be made for the data which is collected under this section to be reviewed regularly to ensure integrity and use of the information.

A number of submissions have highlighted a need for an integrated system of communication to allow for free exchange of the information gathered between all public bodies.

14. Complaints in relation to assessments of Service Statements

Provides for an applicant to make a complaint to the HSE about:

- *a finding that they do not have a disability;*
- *failure of the assessment to meet the standards set by HIQA;*
- *the contents of the Service Statement;*
- *failure to start or complete an assessment within the required timescales;*
and/or
- *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.*

The following is a synopsis of the observations received.

The five grounds for complaint (above) may reasonably be extended to include an additional three grounds:

- the adequacy of the assessment undertaken under section 9 of the Act;
- failure of the Service Statement to provide a service or services in respect of an applicant's assessed needs; and
- failure of the Liaison Officer to amend or vary a Service Statement following a review of the Service Statement under section 11 of the Act.

The time within which a complaint is able to be made under this section is not defined adequately or reasonably. The timeframe is qualified in the Regulations. However, it is still considered to be unreasonable.

The complaints mechanism is an overly complex bureaucratic process and effectively prohibits a disabled person from accessing an independent arbiter until the internal process is exhausted. This is considered to be a 'dis-abling' procedure.

15. Complaints officers

Deals with procedural matters relating to complaints. It provides for the appointment of independent Complaints Officers. The complaint will be resolved informally, if possible. If informal resolution is not possible, the complaint is investigated. A recommendation will issue, having regard to the outcome of the investigation and other considerations such as the eligibility of the person for the service, the practicability of providing the service and the resources available to the service provider. The recommendation will also include a timeframe for the action directed.

The following is a synopsis of the observations received.

The Act calls for the HSE to appoint employees from within it as Complaints Officers. As the HSE provides the service about which a complaint may be made, the 'independence' of this role has been questioned.

If the recommendation to expand the grounds of complaint under section 14 is accepted, the findings or recommendations which a Complaints Officer is entitled to make under this section must be amended accordingly.

The Act requires the procedures under this section to be "*conducted otherwise than in public*". This litigation-avoidance approach limits the amount of precedence which can emerge from the Act and may have the opposite effect of increasing the likelihood of resort to judicial review.

The Act should provide for greater dissemination of information regarding the complaints process.

16. Appeals officer

Provides for the appointment of an appeals officer and sets out the terms and conditions of their appointment and those of their staff.

The following is a synopsis of the observations received.

This section and the provisions of the Schedule relating to it do not clearly establish the exact status of the Appeals Officer, e.g. the Act has not established an independent agency in common with other agencies of Departments.

17. Annual report and information to Minister

Provides for a report on the performance of the functions of the Appeals Officer to be submitted to the Minister and laid before the Houses of the Oireachtas.

The following is a synopsis of the observations received.

Provision should be made for the report to be monitored and issues arising be acted upon.

18. Appeals from and enforcement of recommendations of complaints officer

Sets out the procedures for appeals from and enforcement of recommendations of a Complaints Officer.

The following is a synopsis of the observations received.

Consideration should be given to a provision which would allow the Appeals Officer to "summarily" dismiss an appeal. This would allow them to dismiss an appeal if the subject matter of the appeal has been resolved.

Consideration should also be given to a provision for withdrawing an appeal. Current practice requires the Appeals Officer to issue a determination even if the appellant decides not to pursue the matter any further.

The Act specifies that an appeal under this section be initiated '*within 6 weeks of the date on which the finding or recommendation to which it relates was communicated to the person*'. This has caused significant anomalies and can mean that the Appeal period has expired before the event occurs which is the subject of the appeal. A number of submissions have recommended that this provision be amended to ensure the intention of the Act to provide adequate time for appeal is upheld.

The Act should be amended to require the HSE to inform the Appeals Officer in writing and within a specific timeframe of the steps which have been taken to implement a determination under this section and provide that any failure to comply with this obligation may be relied upon as prima facie evidence on non-implementation for the purposes of proceedings brought under section 22 (Enforcement of determinations, etc.).

19. Mediation

Provides that the Appeals Officer, if he or she is of the opinion that an appeal could be resolved through mediation, may refer the matter to a mediation officer, once the applicant has no objection. If the matter is resolved through mediation, the Mediation Officer will make a written record of the resolution which will be signed by the parties.

The following is a synopsis of the observations received.

Provision should be made for the Appeals Officer, in the event of mediation not resolving the appeal in its entirety, to make a determination on only the unresolved issues of the mediation process using the information obtained at that time.

The Act should be amended to require the HSE to inform the Appeals Officer in writing and within a specific timeframe of the steps which have been taken to implement a resolution under this section and provide that any failure to comply with this obligation may be relied upon as prima facie evidence on non-implementation for the purposes of proceedings brought under section 22 (Enforcement of determinations, etc.).

PART 3: ACCESS TO BUILDINGS AND SERVICES AND SECTORAL PLANS

Sections 24 to 40

25. Access to public buildings

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 they are 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 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 where it would be cost effective for the purpose of giving access to a greater number of people.

The following is a synopsis of the observations received.

The Act needs to clarify who has overall responsibility for ensuring the provisions of this section are being met.

The Office of Public Works (OPW), though not mentioned in the Act, is central to the implementation of this section. The process of engagement between public bodies and the OPW and a timeframe for response should be established through the Act.

Given the definition of 'public body' in the Act, many significant public premises and buildings where public services are provided are outside these provisions on access to public bodies.

The definition of public buildings could, as in the case of heritage sites under section 29(3), include a non-exhaustive list of public building types.

Section 25(4) should be amended to ensure that when this provision is invoked the information becomes publicly available.

Section 26 has made provision for public bodies to ensure the availability of appropriate expertise and skill to give advice about ensuring accessibility to services. A similar provision should apply for this section.

26. Access to services, etc.

Public bodies are required to integrate, where practical and appropriate, their services for people with disabilities with those for other citizens. In some cases, assistance to accessing the service is to be available to people with disabilities,

following a request. The head of a public body must appoint an "Access Officer" to co-ordinate these arrangements.

The following is a synopsis of the observations received.

Clarification of consultation with "*persons with appropriate expertise and skills*" has been sought as there is no obligation on a public body to consult with representative disability organisations that have expertise in the field in which they are working.

A number of submissions have highlighted that an obligation should be placed on all public bodies to make publicly available the contact details of their appointed Access Officer.

All public bodies should be obliged to disability proof any new services being introduced.

27. Accessibility of services supplied to a public body

Requires that public bodies ensure that goods or services purchased are accessible, unless it would: not be practicable; not be justifiable on cost grounds or would result in an unreasonable delay.

The following is a synopsis of the observations received.

Clarification of the scope of this section as to what constitutes services procured by a public body, particularly in the context of health services, is recommended. Where funded services supplied to the public on behalf of a public body do not come within the accessibility provisions of the Act, consideration should be given to placing an obligation on bodies to include equivalent accessibility requirements as a condition of service level agreements.

A number of submissions have suggested that accessibility should be made a precondition of tendering criteria.

A regulatory role should be introduced around public procurement in respect of accessibility requirements and of ensuring this section is aligned with the Public Procurement Regulations.

There is a need for bodies to report on section 27(2), where the provision of accessible service not applying has been invoked.

28. Access to information

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.

The following is a synopsis of the observations received.

A number of submissions suggest this section be amended to ensure all public communications be automatically produced in accessible formats, rather than upon request.

Clarification of the term "as far as practicable" is required and the use of this term should be reconsidered.

The scope of section 28(1) is unclear in whether it applies only to direct written or oral communications with specific persons or would have a wider application to ensure that all information generally available to the public is included.

The focus of section 28(2) is considered too narrow and should be expanded to require all electronic communications to be accessible, not be restricted to those with vision impairment. Also, the text of this provision be amended to read ".....the contents of the communication are accessible to persons with a vision impairment, including those to whom adaptive technology is available".

29. Access to heritage sites

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

The following is a synopsis of the observations received.

This section should require reporting on progress on the accessibility of heritage sites and on any decisions taken under 29(b) to exclude a site from accessibility provisions. Provision should also be made for consultation prior to excluding a site from the requirements of section 29(1).

30. Codes of practice

The Minister may request the NDA to prepare Codes of Practice specifying what public bodies must do to comply with their obligations to make their mainstream services, information resources and heritage sites properly accessible.

The following is a synopsis of the observations received.

The NDA developed a Code of Practice on Accessibility of Public Services and Information provided by Public Bodies. It would be timely to update this Code on completion of the review of the Act. This would also provide an opportunity to address a number of issues raised in submissions on provisions contained within the Code (e.g. point of access to service, website accessibility, accessibility and visibility of complaints process, publishing details for access and enquiry officers, awareness training).

31. Sectoral plans

This section contains guidelines for the provision of Sectoral Plans.

The following is a synopsis of the observations received.

This section should provide for a more responsive updating/amending of Sectoral Plans.

The parameters for review of the Sectoral Plans and the outcome of such review needs to be more clearly defined to ensure a consistent interpretation and application of the legislation.

As there is existing provision for a report on progress no later than 3 years after publication of the plan this would seem a sensible timeframe for successive revisions of the plans.

The timeframe for the preparation for reports on progress under 31(4)(d) should be extended to 'not more than 5 years'.

The importance of requiring all relevant Departments to publish Sectoral Plans and to ensure that, as statutory plans adopted by the Oireachtas, their implementation prevails beyond a change of Department. With the recent transfer of functions of a number of Departments it is recommended that section 31(1) be extended to include the Department of Education and Skills and the Department of Community, Equality and Gaeltacht Affairs. The previous transfer of functions from the Department of Communications, Energy and Natural Resources should also be examined.

As all Departments have legal obligations to service users with disabilities, the provisions in section 31(1) should be extended to include all Departments.

Target actions on disability for any Department outside of the Sectoral Plans should be identified in Statements of Strategy and annual Business Plans and reported on in the Department's Output Statement.

32. Sectoral plan of Minister for Health and Children

Sets out the contents of this Sectoral Plan, e.g. information on services, eligibility criteria, proposed arrangements for the implementation of Part 2 of the Act and the arrangements for co-operation with relevant Ministers.

The following is a synopsis of the observations received.

The HSE plays a significant role in fulfilling the obligations of this Sectoral Plan. Provision should be made for the Plan to identify reporting requirements which the HSE must fulfill in order to achieve its objectives.

Section 32(1)(d) provides for co-operation in the development and co-ordination of the services provided by housing authorities. Provision should be made for co-ordination of housing and care budgets to support integrated delivery of services. This

suggestion would also apply to section 36(1)(e) dealing with the Sectoral Plan of the Department of Environment, Heritage and Local Government.

The arrangements for co-operation with other specified Ministers in section 32(2) may need to be re-examined in light of the transfer of functions of the Departments listed.

33. Sectoral plan of Minister for Social and Family Affairs

Sets out the contents of this Sectoral Plan, e.g. information on eligibility criteria for payments and on the advocacy and sign language interpretation services to be provided by Comhairle (now the Citizens Information Board), as well as other information and arrangements for co-operation with relevant Ministers.

The following is a synopsis of the observations received.

Clarity is required on the scope of section 33(1)(b). The Sectoral Plan references the work of the agencies under the Department's aegis, including the Citizens Information Board, as they apply to people with disabilities but the intention of this specific provision is unclear.

The 'other services' provided for in the Sectoral Plan under section 33(1)(c) need to be re-examined in light of the transfer of responsibility for functions from and to other Departments.

The arrangements for co-operation with other specified Ministers in section 33(2) needs to be re-examined in light of the recent transfer of functions into and out of the Department.

34. Sectoral plan of Minister for Transport

Sets out the contents of this Plan, e.g. information on the programme of measures proposed to ensure access for people with disabilities to passenger transport services; timeframe within which the measures planned will be implemented and arrangements to be made with the Minister for the Environment, Heritage and Local Government to facilitate access to public transport vehicles from a public road.

The following is a synopsis of the observations received.

The Department of Transport is now responsible for marine transport functions previously provided for under section 35(1).

35. Sectoral plan of Minister for Communications, Marine and Natural Resources

Sets out the contents of this Sectoral Plan, e.g. information about measures to make marine transport passenger services and specified ports and harbours accessible to people with disabilities and the timeframe within which the measures planned will be implemented.

The following is a synopsis of the observations received.

Responsibility for marine transport and the operation of ports and harbours transferred to the Department of Transport and the Department of Agriculture, Fisheries and Food. Though the Department does report on accessibility in the broadcasting area, the Act (section 53) amended the Broadcasting Act to provide specifically for a statutory basis within which the Broadcasting Commission of Ireland had to operate to ensure accessibility. The Department's role does not now fall into frontline service delivery and there are no significant issues from a disability perspective within the Department's remit.

At the time the provisions in relation to the content of the Sectoral Plans were being established, the growing importance of telecommunications and broadcasting for people with disabilities was not envisaged. As the landscape has since changed significantly, consideration should be given to prioritising this sector for inclusion in this Sectoral Plan.

37. Sectoral plan of Minister for Enterprise, Trade and Employment

Sets out the contents of this Plan, e.g. information on FAS services available to people with disabilities, the programme proposed to help integrate people with disabilities into employment, measures for the review of such services and the arrangements for co-operation with the Minister for Social Protection and the Minister for Health and Children in relation to the delivery of relevant services.

The following is a synopsis of the observations received.

The listed FAS functions are moving to the Department of Education and Skills and the Department of Social Protection.

38. Complaints

Provides for the making of a complaint in relation to the failure of a body to comply with sections 25, 26, 27, 28 or 29 of Part 2 of the Act.

The following is a synopsis of the observations received.

This section does not specify that the person making the complaint should be a person with a "disability" as defined in section 2(1).

Requirement for a complaint to be made 'in writing' is inappropriate.

39. Inquiry officers

Public bodies must appoint "inquiry officers", independent in the performance of their function, to process complaints about any failure by a public body to provide access as required under sections 25 to 29 of the Act and issue a report setting out their findings and steps to be taken, if required, by the public body. The head of a public body is responsible for developing and publishing procedures in relation to the making and investigation of complaints.

The following is a synopsis of the observations received.

This section provides for the appointment of an "inquiry officer", however, there is no link between this service and that of the "access officer" under section 26(2). A person can make a complaint directly to the head of a public body for examination by an "inquiry officer" without having firstly availed of the "access officer" service. The current provisions do not exclude the circumstance where a person could be engaging both officers at the same time on the same issue.

40. Application of Ombudsman Act 1980

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 failure by a public body to comply with the access requirements of Part 3 or any commitment made in a Sectoral Plan.

The following is a synopsis of the observations received.

The reference to '*a decision of a complaints officer in relation to a sectoral plan*' requires clarification. The definition of a 'complaints officer' under the Act is set out in sections 7 and 15, where it is explicitly stated that the functions of a complaints officer are conferred only under Part 2. The use of the term in this section may be in reference to section 31(4)(b) which states that the sectoral plans must contain a complaints procedure '*in relation to any matters which are the subject of the plan*'. However, this provision does not make any reference to a complaints officer. For Part 3 of the Act generally it is an inquiry officer that makes determinations on complaints brought under section 38.

PART 5: PUBLIC SERVICE EMPLOYMENT

This Part gives statutory basis to positive action measures for the employment of people with disabilities in the public service.

Sections 46 to 51

46. Interpretation

Sets out definitions specific to this Part of the Act.

The following is a synopsis of the observations received.

The definition of a 'public body' here should be more aligned with the one in section 2 for clearer interpretation of the legislation and identification of relevant bodies. The definition here has also led to the exclusion of a significant number of organisations from statutory reporting, particularly Universities and VECs.

It may be appropriate to include a modified definition of 'disability', rather than that set in section 2, for the purposes of this Part. Clarification is required to ensure that people with disabilities who have been accommodated to work should come within the definition of disability under the Act for the purposes of Part 5. This is a contributory factor to under-reporting of staff with disabilities.

47. Employment in public service

Requires each public body, as far as practicable, to take all reasonable measures to promote and support their employment of people with disabilities. A target of 3% of people with disabilities in public bodies shall apply until the relevant Minister makes an order to set alternative compliance targets. Such an order may include targets for employment or recruitment, as well as measures such as special recruitment competition, or for the filling of certain vacancies by suitable qualified people with disabilities.

The following is a synopsis of the observations received.

Consideration should be given to expanding section 47(4), in particular "...unless there is good reason to the contrary for not doing so", to address the issue of non-disclosure by staff.

There should be a greater focus on the recruitment process and on encouraging people with disabilities to participate in competitions for positions in the public service, through the advising of accommodations available to facilitate participation.

The 3% target is self-limiting and may fail to identify measures which may or may not affect the quota but will influence the numbers applying. The Act should reflect that the quota is not an end in itself but should lead to better supports for people with disabilities.

48. Monitoring of compliance with this Part

Requires each Minister to establish a committee to monitor and, in consultation with the NDA, support compliance with this Part. The committee is to consist of at least five people including a person appointed by the relevant Minister and representatives of people with disabilities, employers and employees. Public bodies which are accountable to a relevant Minister will report annually to the committee which, in turn will report to the NDA and the relevant Minister.

The following is a synopsis of the observations received.

The Act is silent on how a public body is to calculate the number of people with disabilities for the purposes of making returns and issues have arisen from the self-disclosure method currently recommended. A number of factors can lead to a person with a disability not disclosing their disability (e.g. accommodations made, therefore no longer have 'substantial restriction' or a reluctance to make a disclosure for fear of a negative impact on their future employment). As a result a true reflection of the number of employees with a disability employed is not being portrayed. The issue of non-disclosure may also result in a person not receiving the available supports in the workplace.

The monitoring of compliance should be restructured from being an annual process to a two- or three-yearly process to reduce the onerous administrative burden, particularly in light of the moratorium on recruitment. Sections 48(5)(b), 48(5)(d) and Sections 49(2)(a) and 50 should be amended accordingly should this be considered.

Section 48(1) states that the Minister shall establish a monitoring committee. In some cases, Departments have no 'public bodies' (other than those staffed by civil servants) and as such may not establish a monitoring committee.

The Act states that the monitoring committee "meet not less than 3 times each year". This should be amended to 'meet as frequently as required'.

The composition of a monitoring committee is unduly demanding given the range of representation required. Though the rationale for such representation is understood, it has proved problematic to source across public bodies.

Issues have arisen with regard to reporting arrangements for small public bodies. These could be excluded or where they are wholly staffed by a parent body, be reported as a unit with that body. Concerns have specifically been expressed with regard to the risk of those declaring a disability being identified and thus risking a breach of the Data Protection Acts.

There are instances in which a public body may have no staff, for example those which are essentially advisory committees but technically constitute 'public bodies' under the terms of the Act. Such bodies should not be required to report.

49. Action to achieve compliance with this Part

Requires a public body to supply to the Minister or the NDA, any information they seek for the purposes of determining whether, at the end of any two successive years,

the body is complying with this Part. The NDA may, with the consent of the relevant Minister, require a public body to implement measures to facilitate compliance.

The following is a synopsis of the observations received.

The two year time frame is considered too short a period to determine matters of non-compliance. It should be extended to three years, particularly given the relatively small staff turnover rates in some public bodies.

In order to request information to establish compliance, section 49(1) states that the NDA must first consult with the Minister. As the National Disability Authority Act 1999 covers the right of the NDA to seek information, this section could be replaced by a phrase stating that the NDA should notify the relevant Minister that information is sought, the nature of the information sought and from which bodies.

The NDA must report on recommendations in respect of public bodies which are in breach in two consecutive years. Section 50 requires a report to be submitted to the Minister not later than 30 November. This timeframe should be amended to have the report submitted in the March following the November in which the relevant statutory report on compliance has been submitted to the Minister. This would greatly facilitate the statutory process which must be followed in gaining information and assessing compliance.

50. Codes of practice in respect of employment in public service

This sections provides for the approval of codes of practice to give guidance to public bodies in implementing Part 5. It also amends the National Disability Authority Act 1999 for this purpose.

The following is a synopsis of the observations received.

No statutory code has been prepared as yet. A future statutory Code of Practice could incorporate guidance on a number of operational aspects of this Part of the Act.

PART 6: CENTRE FOR EXCELLENCE IN UNIVERSAL DESIGN

Section 52

52. Amendment of the Act of 1999

Provided for the establishment of a Centre for Excellence in Universal Design (CEUD) within the NDA to promote best practice in the design of buildings and products, including computers and other electronic systems and for the CEUD to 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.

The following is a synopsis of the observations received.

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. Its definition in the Act differs in some respects from that in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in that the Act focuses more strongly on people with disabilities, the primary focus intended in the legislation. However, it has been suggested that the definition be amended to align more closely with that of the UNCRPD in respect of assistive technologies as follows (subsection 19A(a)(iv): ".... without the need for adaptation of specialised design. Universal design shall not exclude assistive devices for particular groups of persons with disabilities where this is needed").

The definition of '*environment*' should be extended to include public and private places.

Subsection 19C(4)(b) states that the CEUD shall promote public awareness of the difficulties encountered by persons with disabilities in relation to the environment. It has been suggested that consideration be given to widening the scope of awareness to include the difficulties encountered by all people regardless of age, disability and size, in line with the provisions elsewhere in Part 6.

Subsection 19D requires that the consent of the Minister and the Minister for Finance is required in advance of making any arrangement between the CEUD and a 3rd party. The intention of this provision may not be accurately realised in that, on the advice of the Attorney General, it must be interpreted to mean that before a project/idea can be initiated, developed or even explored to check its viability to proceed, consent must be obtained if the NDA has to engage with another party to do work with, or on behalf of, the CEUD.

PART 7: MISCELLANEOUS

Sections 53 to 58

53. Amendment of section 19 of Broadcasting Act 2001

Requires that the Broadcasting Commission of Ireland make 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 vision-impaired. It builds on and enhances existing provision in the Broadcasting Act 2001.

The following is a synopsis of the observations received.

The Broadcasting Act 2001 has been repealed and replaced by the Broadcasting Act 2009. The provisions here are covered in section 43 of the new Act.

Appendix 1: Organisations from which observations were submitted

AHEAD

Brothers of Charity

Centre for Disability Law and Policy

DeafHear

Department of Agriculture, Fisheries and Food

Department of Arts, Sport and Tourism

Department of Communications, Energy and Natural Resources

Department of Community, Equality and Gaeltacht Affairs

Department of Education and Skills

Department of Enterprise, Trade and Innovation

Department of Environment, Heritage and Local Government

Department of Finance

Department of Foreign Affairs

Department of Health and Children

Department of Justice and Law Reform

Department of Social Protection

Department of the Taoiseach

Department of Transport

Disability Appeals Officer

Disability Federation of Ireland

Disability Stakeholder Group²

Inclusion Ireland

Irish Hard of Hearing Association

National Council for the Blind of Ireland

National Disability Authority

Office of Public Works

Office of the Ombudsman

People with Disabilities in Ireland

RehabGroup

Spina Bifida Hydrocephalus Ireland

The Not for Profit Business Association

² This group is part of the National Disability Strategy Stakeholder Monitoring Group (NDSSMG), along with the NDA, social partners and the Senior Officials Group on Disability (representing Government Departments). The members of the Disability Stakeholder Group are: Disability Federation of Ireland; Inclusion Ireland; Irish Mental Health Coalition; National Federation of Voluntary Bodies; the Not for Profit Business Association and People with Disabilities in Ireland.