



AN BILLE UM CHOIMISINÉIR MÍCHUMAIS, 2001
DISABILITY COMMISSIONER BILL, 2001

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As initiated

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AN BILLE UM CHOIMISINÉIR MÍCHUMAIS, 2001
DISABILITY COMMISSIONER BILL, 2001

BILL

entitled

5 AN ACT TO PROMOTE AND PROTECT THE RIGHTS OF
PERSONS WITH A DISABILITY, AND, IN PARTICULAR
TO SECURE THE FAIR, SIMPLE, SPEEDY AND
EFFICIENT RESOLUTION OF COMPLAINTS RELATING
10 TO INFRINGEMENTS OF THOSE RIGHTS; TO PROVIDE
FOR THE APPOINTMENT OF A DISABILITY COM-
MISSIONER TO INVESTIGATE COMPLAINTS AGAINST
PERSONS OR BODIES WHO PROVIDE HEALTH OR
DISABILITY SERVICES; TO DEFINE THE COM-
15 MISSIONER'S FUNCTIONS AND POWERS; TO PROVIDE
FOR THE ESTABLISHMENT OF A DISABILITY ADVO-
CACY SERVICE; TO PROVIDE FOR THE PROMUL-
GATION OF A CODE OF DISABILITY RIGHTS AND
FOR THE ASSESSMENT BY HEALTH BOARDS OF THE
20 NEEDS OF PERSONS WITH A DISABILITY IN ACCORD-
ANCE WITH THE PROVISIONS OF THAT CODE; AND
TO PROVIDE FOR CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

25 **1.**—(1) This Act may be cited as the Disability Commissioner Act, 2001. Short title and commencement.

(2) This Act shall come into operation on the day that is twelve months after the date of its passing, or on such earlier day as the Minister appoints by order.

30 **2.**—In this Act, unless the context otherwise requires— Interpretation.

“action” includes failure to act and also includes any policy or practice;

35 “advocacy services” means the provision of advocates for the rights of persons with a disability, and also includes the provision of such administrative services as may be necessary to enable those advocates to exercise and perform their functions and powers;

“advocacy services agreement” means an agreement under which the Commissioner agrees to provide money to a person in return for

the person providing, or arranging for the provision of, advocacy services;

“advocate” means an advocate provided pursuant to an advocacy services agreement;

“the Code” means the Code of Disability Rights for the time being prescribed by regulations made under *section 56(1)*; 5

“Commissioner” means the Disability Commissioner appointed under *section 4*;

“Court” means the Circuit Court;

“Director of Disability Advocacy” means the person for the time being designated under *section 15(1)* as the Director of Disability Advocacy; 10

“Director of Proceedings” means the person for the time being designated under *section 35(1)* as the Director of Proceedings;

“disability services” includes goods, services and facilities provided to persons with disabilities for their care or support or to promote their independence, or for purposes that are related or incidental thereto; 15

“person with a disability” means a person who has a disability that—

(a) reduces that person’s ability to function independently, and 20

(b) means that the person is likely to need support for an indefinite period,

and, where the context so requires, the phrase “person with a disability” shall be taken to include the family of the person with a disability in any case where the disability is so extreme as to severely or totally impair or limit the ability of the person to give informed consent on his or her own behalf, or to function independently; 25

“disability services provider” means any person or body who provides, or holds himself or herself or itself out as providing, disability services; 30

“document” includes any class or description of document;

“health care provider” means—

(a) a health board,

(b) a person having responsibility for the management of a health care institution, 35

(c) a health professional,

(d) a person who provides ambulance services to the public, and

(e) any other person or body who provides, or holds himself or herself or itself out as providing, health services to the public or to any section of the public, whether or not any charge is made for those services; 40

“health services” means—

- (a) (i) services to promote health,
- (ii) services to protect health,
- (iii) services to prevent disease or ill-health,
- 5 (iv) treatment services,
- (v) nursing services,
- (vi) rehabilitative services,
- (vii) diagnostic services, and
- (b) (i) psychotherapy and counselling services,
- 10 (ii) contraception services and advice,
- (iii) fertility services,
- (iv) sterilisation services,

“health professional” means—

- 15 (a) a medical practitioner, within the meaning of the Medical Practitioners Act, 1978,
- (b) a registered dentist, within the meaning of the Dentists Act, 1985,
- (c) a nurse within the meaning of the Nurses Act, 1985, or
- 20 (d) a member of any other class of health worker or social worker standing prescribed and, for the purposes of this Act (other than *sections 38 and 44*), any person who is receiving training or gaining experience under the supervision of a health professional;

25 “health professional body” means any authority or body that is empowered, under or by virtue of any enactment or law, or the rules of any body or association, to exercise disciplinary powers in respect of any health professional;

“health care institution” means—

- 30 (a) a hospital whether provided and maintained by a health board or in which services are provided on behalf of a health board or otherwise,
- (b) a mental hospital within the meaning of the Mental Treatment Acts, 1945 to 1961,
- 35 (c) a nursing home within the meaning of the Health (Nursing Homes) Act, 1990, and

(d) any other institution in which health services are provided, whether on a residential or non-residential basis, that stands prescribed for the purposes of this Act (other than sections 38 and 44);

“health care procedure” means any health treatment, health examination, health teaching, or health research administered to or carried out on or in respect of any person by any health care provider and includes any provision of health services to any person by any health care provider; 5

“Human Rights Commission” means the Human Rights Commission established under the Human Rights Commission Act, 2000; 10

“National Disability Authority” means the National Disability Authority established under the National Disability Authority Act, 1999;

“informed consent”, in relation to a person with a disability on or in respect of whom there is carried out any health care procedure, means consent to that procedure where that consent— 15

(a) is freely given by the person or, where applicable, by any person who is entitled to consent on the person’s behalf, and

(b) is obtained in accordance with such requirements as are prescribed by the Code; 20

“Minister” means the Minister for Justice, Equality and Law Reform.

Purpose. 3.—The purpose of this Act is to promote and protect the rights of persons with a disability in relation to the provision of services to which this Act applies and, to that end, to facilitate the fair, simple, speedy and efficient resolution of complaints relating to infringements of those rights. 25

PART 2

DISABILITY COMMISSIONER 30

Disability Commissioner. 4.—(1) There is hereby established the office of Disability Commissioner (“the Commissioner”).

(2) The appointment of a person to be the Commissioner shall be made by the President upon resolution passed by Dáil Éireann and by Seanad Éireann recommending the appointment of the person. 35

(3) A person appointed to be the Commissioner—

(a) may at his or her own request be relieved of office by the President,

(b) may be removed from office by the President but shall not be removed from office except for stated misbehaviour, incapacity or bankruptcy and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his or her removal, 40

(c) shall in any case vacate the office on attaining the age of 67 years. 45

(4) Subject to the provisions of this section, a person appointed to be the Commissioner shall hold office for a term of 6 years and may be re-appointed to the office for a second or subsequent term.

5 (5) (a) Where a person who holds the office of Commissioner is nominated either as a candidate for election to either House of the Oireachtas, the European Assembly or a local authority or as a member of Seanad Éireann or is appointed as a member of the European Assembly or a local authority, he or she shall thereupon cease to hold the office of Commissioner.

(b) A person who is for the time being entitled—

(i) under the Standing Orders of either House of the Oireachtas to sit therein,

15 (ii) under the rules of procedure of the European Parliament to sit therein, or

(iii) under the standing orders of a local authority to sit as a member thereof,

shall, while so entitled, be disqualified for holding the office of Commissioner.

20 (6) A person who holds the office of Commissioner shall not hold any other office or employment in respect of which emoluments are payable or be a member of the Reserve Defence Force.

(7) A person shall be not more than 61 years of age upon first being appointed to the office of Commissioner.

25 (8) The Commissioner shall be a corporation sole with perpetual succession and a seal of office and shall have and may exercise all the rights, powers and privileges and may incur all the liabilities and obligations of a natural person of full age and capacity.

30 **5.**—In recommending a person for appointment as the Commissioner the Houses of the Oireachtas shall have regard to the following matters— Qualifications for appointment.

(a) the functions and powers of the Commissioner,

(b) the person's personal attributes,

(c) the person's knowledge of, or experience in—

35 (i) the Irish health care system,

(ii) the Irish disability services system,

(iii) the resolution of disputes, including mediation and arbitration,

40 (d) the person's understanding of the various needs of persons with a disability,

(e) the person's understanding of the capacities and resources of various disability services,

- (f) the person's recognition of the social, cultural and religious values of different cultural and ethnic groups in the State.

Functions of
Commissioner.

- 6.—(1) The functions of the Commissioner are as follows:
- (a) as a first priority, to prepare a draft Code of Disability Rights in accordance with *section 10*, 5
 - (b) in accordance with *section 12*, to review the Code and make to the Minister any recommendations for changes to the Code,
 - (c) to promote by education and publicity respect for and observance of the rights of persons with a disability and, 10 among others, to promote awareness among health care providers and disability services providers of the rights of persons with a disability and of the means by which those rights may be enforced,
 - (d) to make public statements and publish reports in relation to 15 any matter affecting the rights of persons with a disability, including statements and reports that promote an understanding of and compliance with the Code or the provisions of this Act,
 - (e) to investigate, on complaint or on the Commissioner's own 20 initiative, any action that is or appears to the Commissioner to be in breach of the Code,
 - (f) to refer complaints or investigations, on the Commissioner's own initiative, to the Director of Proceedings for the purpose of deciding whether or not any further action should 25 be taken in respect of any such breach or alleged breach,
 - (g) subject to *section 35(2)* to make recommendations to any appropriate person or authority in relation to the means by which complaints involving alleged breaches of the Code might be resolved and further breaches avoided, 30
 - (h) to prepare guidelines for the operation of advocacy services in accordance with *section 19*,
 - (i) to make suggestions to any person in relation to any matter that concerns the need for, or the desirability of, action by that person in the interests of the rights of persons 35 with a disability,
 - (j) on the Commissioner's own initiative or at the request of the Minister to advise the Minister on any matter relating to—
 - (i) the rights of persons with a disability, or 40
 - (ii) the administration of this Act,
 - (k) to report to the Minister from time to time on the need for, or desirability of, legislative, administrative or other action to give protection or better protection to the rights of persons with a disability, 45
 - (l) to receive and invite representations from members of the public and from any other body, organisation or agency

on matters relating to the rights of persons with a disability,

5 (m) to gather such information as in the Commissioner's opinion will assist the Commissioner in carrying out the Commissioner's functions under this Act,

(n) to do anything incidental or conducive to the performance of any of the preceding functions,

10 (o) to perform such functions as the Commissioner is for the time being authorised to perform by the Minister by written notice to the Commissioner after consultation with the Commissioner,

(p) to exercise and perform such other functions, powers and duties as are conferred or imposed on the Commissioner by or under this Act or any other enactment.

15 (2) Where a notice is given to the Commissioner under *subsection (1)(o)* of this section, the Minister shall, as soon as practicable after the giving of the notice, publish in *Iris Oifigiúil* and lay before each House of the Oireachtas a copy of the notice.

20 7.—(1) In performing his or her functions the Commissioner shall— Performance of functions.

(a) establish and maintain effective links with—

(i) representatives of persons with a disability, health care providers and disability services providers,

25 (ii) other bodies and organisations (including community groups) concerned with health matters or matters relating to disabilities,

and

30 (b) consult and co-operate with other agencies concerned with personal rights including the Ombudsman, the Human Rights Commission, the Equality Authority, the Information Commissioner and the National Disability Authority.

35 8.—Without limiting the right of the Commissioner to report at any other time, but subject to section 49, the Commissioner shall in each year furnish to both Houses of the Oireachtas, and shall cause to be published, a report with respect to the operation of this Act during the year to which the report relates. Annual Report.

40 9.—(1) As soon as practicable after the expiry of the period of 3 years, beginning on the commencement of this Act, and thereafter at intervals of not more than 5 years the Commissioner shall— Review of operation of Act.

(a) review the operation of this Act since—

(i) the date of its commencement (in the case of the first review carried out under this paragraph), or

- (ii) the date of the last review carried out under this paragraph (in the case of every subsequent review),
- (b) consider whether any amendments to this Act are necessary or desirable, and
- (c) report the Commissioner's findings to the Minister. 5

(2) As soon as practicable after receiving a report from the Commissioner under *subsection (1)(c)*, the Minister shall lay a copy of that report before each House of the Oireachtas.

PART 3

CODE OF DISABILITY RIGHTS 10

Commissioner to prepare draft Code.

10.—(1) As soon as practicable after the commencement of this section the Commissioner shall, subject to *sections 11* and *12*, prepare a draft Code of Disability Rights and shall forward that draft to the Minister.

(2) Within two months after a draft is received by the Minister in accordance with this section the Minister shall lay a copy of the draft before each House of the Oireachtas. 15

(3) Where, at the expiry of the period of three months beginning on the commencement of this Part the Commissioner has not forwarded a draft Code to the Minister in accordance with *subsection (1)*, the Commissioner shall, as soon as practicable after the expiry of that period and then at intervals of not more than 3 months until a draft Code has been so forwarded, report to the Minister on the progress made in the preparation of the draft Code. 20

Content of Code: assessment of needs by health boards.

11.—(1) A Code of Disability Rights prescribed by regulations made under *section 56(1)* of this Act shall contain provisions relating to the following matters: 25

- (a) the right of every person with a disability to receive a full assessment by the relevant health board in accordance with the provisions of *subsection (3)* of the nature of his or her disability, the treatment or therapy that will be necessary as a result and the support services that will be necessary for him or her from that moment on, 30
- (b) the right of every person with a disability to be involved in the assessment of his or her needs to the maximum extent possible and to full information about the outcome of the assessment, 35
- (c) the right of every person with a disability to services that are based on an adequate assessment of relevant needs and provided in a diligent and timely manner and in accordance with fair and sound administrative practice, 40
- (d) the right of every person with a disability to be represented where necessary in every consideration of their case, and to have access to full information at all times in respect of any decisions made about their treatment, therapy or the services to be provided to them, 45

(e) the right of every person with a disability to services that are provided in a manner that respects the dignity and independence of the individual.

5 (2) Without limiting the generality of *subsection (1)*, a Code of Disability Rights prescribed by regulations made under *section 56 (1)* may provide for—

(a) any matter relating to the rights of persons with a disability that the Commissioner considers is of particular importance to such persons,

10 (b) any matter incidental or ancillary to the rights of persons with a disability.

15 (3) (a) For the purposes of *subsection (1)*, but subject to the subsequent provisions of this subsection, where it appears to a health board that any person with a disability may be in need of disability services or health services the board—

(i) shall carry out an assessment of that person's needs for those services, and

20 (ii) having regard to the results of that assessment shall then decide whether and to what extent his or her needs call for the provision by it of any such services or the arranging by it for the provision of such services by any other person,

25 (b) if at any time during the assessment of the needs of any person under paragraph (a) it appears to a health board that there may be a need for the provision to that person of any services which fall within the functions of a housing authority, the health board shall notify that housing authority and invite it to assist, to such extent as is reasonable in the circumstances, in the making of the assessment, and in making its decision as to the provision of the services needed for the person in question the health board shall take into account any services which are likely to be made available for that person by that housing authority,

35 (c) the Commissioner may give directions as to the manner in which assessments under this section are to be carried out, the form they are to take and the time periods following which they are to be repeated or updated but, subject to any such directions, they shall be carried out in such manner and take such form as the health board considers appropriate,

40 (d) nothing in this section shall prevent a health board from temporarily providing or arranging for the provision of disability services or health services for any person without carrying out a prior assessment of that person's needs in accordance with this subsection if, in the opinion of the board, the condition of that person is such that he or she requires those services as a matter of urgency,

50 (e) if, by virtue of *paragraph (d)*, services have been provided temporarily for any person as a matter of urgency then, as soon as practicable thereafter, an assessment of that person's needs shall be made in accordance with this subsection.

12.—(1) The Commissioner shall from time to time, as often as is necessary to ensure that a complete review of the Code is carried out at intervals of not more than 3 years, review the Code and make recommendations to the Minister on what changes (if any) the Commissioner considers should be made to the Code. 5

(2) The Commissioner—

(a) shall whenever the Minister so requests, and

(b) may at any time on the Commissioner’s own initiative,

review the Code or any part of the Code and make recommendations to the Minister on what changes (if any) the Commissioner considers should be made to the Code. 10

(3) Within 12 sitting days after receiving any recommendations from the Commissioner in accordance with *subsection (1)* or, as the case may be *subsection (2)*, the Minister shall lay a copy of those recommendations before both Houses of the Oireachtas. 15

13.—(1) The Commissioner shall not forward a draft Code to the Minister in accordance with *section 10(1)* unless—

(a) the Commissioner has given public notice of his or her intention to forward a draft Code to the Minister which notice shall contain a statement that— 20

(i) the details of the proposed draft Code, including a copy of the proposed draft Code, may be obtained from the Commissioner,

(ii) submissions on the proposed draft Code may be made in writing to the Commissioner within such period as is specified in the notice, 25

and

(b) the Commissioner has done everything reasonably possible on his or her part to advise all persons whom the Commissioner considers may have an interest in the proposed draft Code, or representatives of those persons, of the terms of the proposed draft Code and has given such persons or their representatives a reasonable opportunity to consider the proposed draft Code and to make submissions on it to the Commissioner and has considered any such submissions. 30 35

(2) Nothing in *subsection (1)* prevents the Commissioner from adopting any additional means of publicising the proposal to forward a draft Code to the Minister or of consulting with interested parties in relation to such a draft Code. 40

(3) Failure to comply with all or any of the requirements of *subsection (1)* shall in no way affect the validity of any Code prescribed by regulations made under *section 56(1)*.

14.—Without limiting *section 12(2)* the Commissioner shall, in carrying out the requirements of *sections 10* and *12*, consult with and invite submissions from such persons, bodies, organisations and agencies including— 45

(a) representatives of persons with a disability, health care providers and disability services providers, and

(b) the Ombudsman, the Human Rights Commission, the Equality Authority, the Information Commissioner and the National Disability Authority,

as the Commissioner considers necessary to ensure that a wide range of views is available to the Commissioner to assist in the preparation and review of the Code.

PART 4

DISABILITY ADVOCACY SERVICE

15.—(1) For the purposes of this Act the Commissioner shall from time to time designate one of his or her officers as the Director of Disability Advocacy.

Director of Disability Advocacy.

(2) In exercising or performing the powers, duties and functions of the Director of Disability Advocacy under this Act the person for the time being designated under *subsection (1)* shall not be responsible to the Commissioner but shall act independently.

(3) Nothing in *subsection (2)* limits the responsibility of the Director of Disability Advocacy to the Commissioner for the efficient, effective and economical management of the activities of the Director of Disability Advocacy.

16.—The functions of the Director of Disability Advocacy are as follows:

Functions of Director of Disability Advocacy.

(a) to administer advocacy services agreements,

(b) to promote, by education and publicity, advocacy services,

(c) to oversee the training of advocates,

(d) to monitor the operation of advocacy services and to report to the Minister from time to time on the results of that monitoring.

17.—Subject to this Act, advocacy services shall operate independently of the Commissioner, the Minister, health care providers and disability services providers.

Advocacy services to operate independently.

18.—(1) Subject to this Act the Director of Disability Advocacy shall from time to time—

Purchase of consumer advocacy services.

(a) negotiate and enter into advocacy services agreements containing such terms and conditions as may be agreed, and

(b) monitor the performance of each advocacy services agreement.

(2) Every advocacy services agreement shall impose on the person that agrees to provide, or arrange for the provision of, advocacy services pursuant to the agreement the duty to ensure that any guidelines for the time being in force pursuant to *section 19* are followed in the provision of those services.

Guidelines for operation of advocacy services.

19.—(1) The Commissioner may from time to time issue guidelines relating to the operation of advocacy services.

(2) Without limiting *subsection (1)*, any guidelines issued pursuant to *subsection (1)* shall include provisions relating to the procedures to be followed by advocates in carrying out their functions, including any special procedures to be followed when advocates are dealing with any particular persons or classes of persons. 5

(3) The Commissioner may from time to time issue an amendment or revocation of any guidelines issued pursuant to this section.

(4) The Commissioner shall ensure that copies of all guidelines, and all amendments to any such guidelines, that are for the time being in force pursuant to this section are available for inspection by members of the public free of charge. 10

Consultation on preparation of guidelines.

20.—Without limiting *section 19(2)* of this Act the Commissioner shall, before issuing any guidelines or amendments to guidelines pursuant to *section 19*, consult with and invite representations from such persons, bodies, organisations and agencies, including representatives of persons with a disability, health care providers and disability services providers, as the Commissioner considers necessary to ensure that a wide range of views is available to the Commissioner to assist in the preparation of those guidelines or amendments. 15 20

Functions of advocates.

21.—An advocate shall have the following functions:

- (a) to act as an advocate for persons with a disability,
- (b) to use his or her best endeavours to ensure that persons with a disability are made aware of the provisions of the Code, 25
- (c) having regard to the needs, values and beliefs of different cultural, religious, social and ethnic groups to provide information and assistance to persons with a disability and members of the public for the purposes of— 30
 - (i) promoting awareness of the rights of persons with a disability,
 - (ii) promoting awareness of the procedures available for the resolution of complaints involving a possible breach of the Code, 35
- (d) to provide to persons with a disability such assistance as may be necessary to ensure that the person's consent to the carrying out of treatment or therapy is obtained and that consent is informed consent to the maximum extent possible, 40
- (e) to promote by education and publicity an understanding of and compliance with the principle that, except where any enactment or any provision of the Code otherwise provides, no treatment or therapy shall be carried out without informed consent, 45
- (f) in respect of health care providers and disability services providers in the area that the advocate serves—

- (i) to provide information on the rights of persons with a disability,
- (ii) to promote awareness of advocacy services,
- 5 (iii) to provide advice on the establishment and maintenance of procedures to ensure the protection of the rights of persons with a disability, including monitoring procedures and complaints procedures,
- (g) to receive complaints alleging that any action of any health care provider or disability services provider is or appears to be in breach of the Code,
- 10 (h) in respect of a complaint of the kind referred to in *paragraph (g)* to represent or assist the person alleged to be aggrieved for the purposes of endeavouring to resolve the complaint by agreement between the parties concerned,
- 15 (i) to provide assistance to persons who wish—
 - (i) to pursue a complaint of the kind referred to in *paragraph (g)* through any formal or informal procedures that exist for resolving that complaint,
 - 20 (ii) to make a representation to the Commissioner or any other body or person in respect of any matter that is or appears to be in breach of the Code,
- (j) to report regularly to the Director of Disability Advocacy on the operation of advocacy services in the area served by the advocate,
- 25 (k) to report to the Commissioner from time to time on any matter relating to the rights of persons with a disability, whether in relation to a particular person or group of persons or in relation to people with a disability generally, that in the advocate's opinion should be drawn to the attention of the Commissioner,
- 30 (l) to exercise and perform such other functions, powers and duties as are conferred or imposed on advocates by or under this Act or any other enactment.

PART 5

35 INVESTIGATION OF COMPLAINTS

22.—Any person may make a complaint to an advocate or to the Commissioner alleging that any action of any health care provider or disability services provider is or appears to be in breach of the Code or that a person with a disability is being deprived of the rights of that person under the Code. Complaints.

23.—A complaint to an advocate or to the Commissioner may be made either orally or in writing. Mode of complaint.

24.—Where—

- (a) a complaint is made under this Part to an advocate, and
 - 45 (b) the advocate is unable to resolve the complaint,
- Advocate to refer unresolved complaint to Commissioner.

the advocate shall refer the complaint to the Commissioner and in that case the complaint shall be deemed to be a complaint made to the Commissioner and inform the parties concerned of that referral and the reasons for it.

Investigation of breaches of Code.

25.—(1) It shall be a function of the Commissioner to investigate any action of any health care provider or any disability services provider where that action is or appears to the Commissioner to be in breach of the Code. 5

(2) The Commissioner may commence an investigation under *section (1)* either on complaint made to the Commissioner or on the Commissioner's own initiative. 10

Action on receipt of complaint.

26.—(1) On receiving a complaint under this Part the Commissioner may do all or any of the following—

- (a) investigate the complaint himself or herself,
- (b) refer the complaint to an advocate in accordance with *section 30* for the purpose of resolving the complaint by agreement between the parties concerned, 15
- (c) decide, in accordance with *section 27*, to take no action on the complaint.

(2) The Commissioner shall, as soon as practicable, advise the complainant and the health care provider or, as the case requires, the disability services provider to whom or to which the complaint relates of the procedure that the Commissioner proposes to adopt under *subsection (1)*. 20

Commissioner may decide to take no action on complaint.

27.—(1) The Commissioner may in his or her discretion decide to take no action or, as the case may require, no further action on any complaint if, in the Commissioner's opinion— 25

- (a) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable, 30
- (b) the subject-matter of the complaint is trivial,
- (c) the complaint is frivolous or vexatious or is not made in good faith, 35
- (d) the person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued, or
- (e) there is in all the circumstances an adequate remedy or right of appeal, other than the right to make a complaint to the Commissioner, which it would be reasonable for the person alleged to be aggrieved to exercise. 40

(2) Notwithstanding anything in *subsection (1)* the Commissioner may in his or her discretion decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it

appears to the Commissioner that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

5 (3) In any case where the Commissioner decides to take no action, or no further action, on a complaint the Commissioner shall inform the complainant of that decision and the reasons for it.

28.—(1) Where, on receiving a complaint under this Part, the Commissioner considers that the complaint relates in whole or in part—

Referral of complaint to Ombudsman or Information Commissioner or Human Rights Commission.

10 (a) to a matter that is more properly within the jurisdiction of the Ombudsman under the Ombudsmen Act, 1980, or

(b) to a matter that is more properly within the jurisdiction of the Information Commissioner under the Freedom of Information Act, 1997, or

15 (c) to a matter that is more properly within the jurisdiction of the Human Rights Commission under the Human Rights Commission Act, 2000,

20 the Commissioner shall forthwith consult with the Ombudsman or, as the case requires, the Information Commissioner or the Human Rights Commission in order to determine the appropriate means of dealing with the complaint.

(2) As soon as practicable after consulting with any person under subsection (1), the Commissioner shall determine whether or not the complaint should be dealt with, in whole or in part, under this Act.

25 (3) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under the Ombudsman Act, 1980, the Commissioner shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the Ombudsman to be dealt with accordingly and shall notify the complainant of the
30 action that has been taken.

(4) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under the Freedom of Information Act, 1997, the Commissioner shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the
35 Information Commissioner to be dealt with accordingly and shall notify the complainant of the action that has been taken.

(5) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under the Human Rights Commission Act, 2000, the Commissioner shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the
40 Human Rights Commission to be dealt with accordingly and shall notify the complainant of the action that has been taken.

29.—Before proceeding to investigate any matter under this Part of this Act, the Commissioner shall—

Proceedings of Commissioner.

45 (a) inform the complainant (if any), the health care provider or, as the case requires, the disability services provider to whom or to which the investigation relates and any person alleged to be aggrieved, if not the complainant, of the Commissioner's intention to make the investigation, and

(b) inform the health care provider or, as the case requires, the disability services provider to whom or to which the investigation relates of—

(i) the details of the complaint (if any) or, as the case may be, the subject-matter of the investigation, and 5

(ii) the right of that person to submit to the Commissioner within a reasonable time a written response in relation to the complaint or, as the case may be, the subject-matter of the investigation.

Commissioner may refer matter to advocate.

30.—(1) The Commissioner may, at any stage of the investigation of any matter under this Part of this Act, refer the matter to an advocate for the purpose of resolving the matter by agreement between the parties concerned. 10

(2) Where any matter is referred to an advocate pursuant to *subsection (1)* the advocate shall— 15

(a) use his or her best endeavours to resolve the complaint by agreement between the parties concerned, and

(b) report the results of those endeavours to the Commissioner.

(3) Every report made under *subsection (2)(b)* shall record—

(a) the terms of any agreement reached between the parties concerned, 20

(b) where agreement is not reached on all matters, those matters on which agreement is reached and those matters on which no agreement is reached, and

(c) such other matters as the advocate thinks fit. 25

(4) A copy of every report made under *subsection (2)(b)* shall, on request, be made available by the Commissioner to each of the parties concerned.

Parties to be informed of result of investigation.

31.—Where any investigation is made following a complaint the Commissioner shall conduct the investigation with due expedition and shall inform the parties concerned, as soon as reasonably practicable after the conclusion of the investigation and in such manner as the Commissioner thinks proper, of the result of the investigation and of what further action (if any) the Commissioner proposes to take in respect of that complaint. 30
35

Procedure after investigation.

32.—Where after making any investigation under this Part the Commissioner is of the opinion that any action that was the subject-matter of the investigation was in breach of the Code the Commissioner may do all or any of the following:

(a) report the Commissioner's opinion, with reasons, to the health care provider or, as the case requires, the disability services provider whose action was the subject-matter of the investigation and may make such recommendations 40

as the Commissioner thinks fit including a recommendation that disciplinary proceedings be taken against any officer or employee or member of the health care provider or, as the case requires, of the disability services provider,

5

(b) report the Commissioner's opinion, with reasons, together with such recommendations (if any) as the Commissioner thinks fit, to any other person that the Commissioner considers appropriate,

10 (c) make such report to the Oireachtas as the Commissioner thinks fit,

(d) make a complaint to any health professional body in respect of any person,

15 (e) where any person wishes to make such a complaint assist that person to do so,

(f) refer the matter to the Director of Proceedings for the purpose of deciding whether any one or more of the following actions should be taken:

(i) the institution of proceedings under *section 36*,

20 (ii) the institution of disciplinary proceedings.

33.—(1) Where, in accordance with *section 32(a)* or *(b)*, the Commissioner makes any recommendation to any person the Commissioner may request that person to notify the Commissioner within a specified time of the steps (if any) that the person proposes to take to give effect to that recommendation.

25

Implementation of recommendations of Commissioner.

(2) If, within a reasonable time after a recommendation is made, no action is taken which seems to the Commissioner to be adequate and appropriate the Commissioner—

30 (a) shall, after considering the comments (if any) of the person concerned, inform the complainant (if any) of the Commissioner's recommendations and may make such comments on the matter as the Commissioner thinks fit, and

35 (b) may, where the Commissioner considers it appropriate, transmit to the Oireachtas such report on the matter as the Commissioner thinks fit.

34.—If, during or after any investigation, the Commissioner is of the opinion that there is any evidence of any significant breach of duty or misconduct on the part of any health care provider or disability services provider or any officer or employee or member of a health care provider or disability services provider the Commissioner shall refer the matter to the appropriate person or authority.

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Commissioner to report certain matters to appropriate authority.

PART 6

DIRECTOR OF PROCEEDINGS

Director of Proceedings.

35.—(1) For the purposes of this Act the Commissioner shall from time to time designate one of his or her officers as the Director of Proceedings. 5

(2) In exercising or performing the powers, duties and functions of the Director of Proceedings under this Act the person for the time being designated under *subsection (1)* shall not be responsible to the Commissioner but shall act independently.

(3) Nothing in *subsection (2)* limits the responsibility of the Director of Proceedings to the Commissioner for the efficient, effective and economical management of the activities of the Director of Proceedings. 10

(4) No person shall hold at the same time a designation under *subsection (1)* and a designation under *section 15(1)*. 15

(5) The function of the Director of Proceedings under this Part is to decide, on referral from the Commissioner pursuant to *section 32 (f)*, whether to institute proceedings against a health service provider, a disability services provider or a person against whom a complaint has been made under *Part 5* of this Act or in respect of whom an investigation has been conducted under *Part 5*. 20

(6) If the Director of Proceedings decides that such proceedings should be instituted or, as the case may be, that any such action should be taken it shall be the function of the Director of Proceedings to institute the proceedings or, as the case may be, to take the action. 25

(7) The Director of Proceedings shall not—

(a) institute proceedings under *section 36* or disciplinary proceedings or both against a person referred to in *subsection (1)*, or 30

(b) take any of the actions contemplated by *section 32* in respect of any such person,

unless the Director of Proceedings has given that person an opportunity to be heard.

(8) In determining— 35

(a) whether or not to institute such proceedings or to take any such action,

(b) the type of proceedings to be instituted or the type of action to be taken, and

(c) the order in which such proceedings are instituted or such action taken, 40

the Director of Proceedings shall have regard to—

(i) the wishes of the complainant (if any) and the aggrieved person (if not the complainant) in relation to that matter, and 45

(ii) the need to ensure that appropriate disciplinary proceedings are instituted in any case where the public interest, whether for reasons of public health or public safety or for any other reason, so requires.

5 **36.**—(1) This section applies to any health care provider or disability services provider in respect of whom or of which an investigation has been conducted under this Part in relation to any action alleged to be in breach of the Code. Proceedings before the Court.

10 (2) Subject to *sections 36(2) and 41*, civil proceedings before the Court shall lie at the suit of the Director of Proceedings against any person to whom this section applies for a breach by that person of the Code.

15 (3) The Director of Proceedings may, under *subsection (2)*, bring proceedings on behalf of a class of persons and may seek on behalf of persons who belong to the class any of the remedies described in *section 40* where the Director of Proceedings considers that a person to whom this section applies is carrying on a practice which affects that class and which is in breach of the Code.

20 (4) Where proceedings are commenced by the Director of Proceedings under *subsection (2)* neither the complainant (if any) nor the aggrieved person (if not the complainant) shall be an original party to or, unless the Court otherwise orders, join or be joined in any such proceedings.

25 **37.**—Notwithstanding *section 36(2)* but subject to *section 39*, the aggrieved person, whether personally or by any person authorised to act on his or her behalf, may bring proceedings before the Court against a person to whom *section 36* applies if he or she wishes to do so, and— Aggrieved person may bring proceedings before Court.

30 (a) the Director of Proceedings is of the opinion that the complaint does not have substance or that the matter ought not to be proceeded with, or

(b) in a case where the Director of Proceedings would be entitled to bring proceedings the Director of Proceedings—

35 (i) agrees to the aggrieved person bringing proceedings, or

(ii) declines to take proceedings.

40 **38.**—In any proceedings before the Court brought by the Director of Proceedings or the aggrieved person the plaintiff may seek such of the remedies described in *section 40* as he or she thinks fit. Remedies that may be sought.

45 **39.**—Nothing in *section 36* or *section 37* authorises or permits the Director of Proceedings or any aggrieved person to bring proceedings before the Court in respect of any action that is alleged to be in breach of the Code in any case where the matter has been resolved under this Act by agreement between the parties concerned unless a term of that agreement has not been complied with. Limitation on right to bring proceedings.

40.—(1) If in any proceedings under *section 36* or *section 37* the Court is satisfied on the balance of probabilities that any action of the defendant is in breach of the Code it may grant one or more of the following remedies:

- (a) a declaration that the action of the defendant is in breach of the Code, 5
- (b) an order restraining the defendant from continuing or repeating the breach or from engaging in or causing or permitting others to engage in conduct of the same kind as that constituting the breach or conduct or any similar kind specified in the order, 10
- (c) damages in accordance with *section 42*,
- (d) an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the aggrieved person as a result of the breach, 15
- (e) such other relief as the Court thinks fit.

(2) In any proceedings under *section 36* or *section 37* the Court may award such costs against the defendant as it thinks fit whether or not it makes any other order or may award costs against the plaintiff or may decline to award costs against either party. 20

(3) Where the Director of Proceedings is the plaintiff any costs awarded against him or her shall be paid by the Commissioner and the Commissioner shall not be entitled to be indemnified by the complainant or, as the case may be, the aggrieved person.

(4) It shall not be a defence to proceedings under *section 36* or *section 37* that the breach was unintentional or without negligence on the part of the defendant or any officer or employee or member of the defendant but the Court shall take the conduct of the defendant or, as the case may require, of any officer or employee or member of the defendant into account in deciding what, if any, remedy to grant. 30

(5) In any proceedings under *section 36* or *section 37* in respect of any action of a health professional the Court shall, where that action has been the subject of disciplinary proceedings, have regard to the findings of the body before which those disciplinary proceedings were heard and to any penalty imposed on that health professional in those proceedings. 35

41.—(1) The Director of Proceedings may appear and be heard in person or by counsel—

- (a) in any proceedings under this Act before the Court, and 40
- (b) in any proceedings in the High or the Supreme Court in relation to any proceedings that are or have been before the Court under this Act whether or not the Director of Proceedings is or was a party to the proceedings before the Court. 45

(2) Where pursuant to *subsection (1)* the Director of Proceedings appears in any proceedings of a kind described in that subsection he or she shall, unless those proceedings are by way of appeal, have the right—

(a) to call evidence on any matter, including evidence in rebuttal, that should be taken into account in the proceedings,

(b) to examine, cross-examine and re-examine witnesses,

5 but shall have no greater rights than parties to the proceedings in respect of the calling of evidence or evidence in rebuttal or in respect of the examination, cross-examination and re-examination of witnesses.

10 (3) Where pursuant to *subsection (1)* the Director of Proceedings, not being a party to any proceedings before the Court, appears in those proceedings or in any proceedings in the High or Supreme Court in relation to those proceedings the Court, or the High or Supreme Court as the case may be, may make such order as it thinks fit—

15 (a) as to the payment by any party to the proceedings of the costs incurred by the Director of Proceedings in so doing, or

(b) as to the payment by the Director of Proceedings of any costs incurred by any of the parties to the proceedings by reason of the appearance of the Director of Proceedings.

20 (4) Costs ordered to be paid by the Director of Proceedings shall be paid by the Commissioner.

(5) Nothing in this section limits or affects—

(a) *section 40(2)*, or

25 (b) any power of a court to award costs in any proceedings to which the Director of Proceedings is a party.

42.—(1) Subject to *section 40*, in any proceedings under *section 36* Damages. or *section 37* the Court may award damages against the defendant for a breach of any of the provisions of the Code in respect of any one or more of the following:

30 (a) pecuniary loss suffered as a result of and expenses reasonably incurred by the aggrieved person for the purpose of the transaction or activity out of which the breach arose,

35 (b) loss of any benefit, whether or not of a monetary kind, which the aggrieved person might reasonably have been expected to obtain but for the breach,

(c) humiliation, loss of dignity and injury to the feelings of the aggrieved person,

(d) any action of the defendant that was in flagrant disregard of the rights of the aggrieved person.

40 (2) The Commissioner shall pay damages recovered by the Director of Proceedings under this section to the aggrieved person on whose behalf the proceedings were brought.

PART 7

MISCELLANEOUS PROVISIONS

Procedure.

43.—(1) Every investigation under Part 5 by the Commissioner may be conducted in public or in private.

(2) Subject to section 49— 5

(a) the Commissioner may hear or obtain information from such persons as the Commissioner thinks fit including, where the Commissioner considers that cultural matters are a factor relevant to a complaint or investigation, information from such persons as the Commissioner 10 thinks have knowledge of or experience in those matters,

(b) the Commissioner may make such inquiries as the Commissioner thinks fit,

(c) it shall not be necessary for the Commissioner to hold a formal hearing. 15

(3) Subject to sections 29(b) and 49 no person shall be entitled as of right to be heard by the Commissioner.

(4) Without limiting any other provision of this Act the Commissioner may at any time, if the Commissioner considers that it is necessary or desirable in the public interest (whether for reasons of 20 public health or public safety or for any other reason) that any matter be brought to the attention of any person or authority, refer the matter to the appropriate person or authority.

(5) Subject to the provisions of this Act the Commissioner and every advocate may regulate his or her procedure in such manner as 25 he or she thinks fit.

Duty to forward complaints.

44.—Notwithstanding any provision in any enactment where any letter appearing to be written by or on behalf of any health consumer in any health care institution is addressed to the Commissioner or to an advocate, the person for the time being in charge of that insti- 30 tution shall immediately forward the letter unopened to the Commissioner or, as the case may require, that advocate.

Mediation conference.

45.—(1) Where, in respect of any matter that is the subject of an investigation by the Commissioner, the Commissioner is of the opinion that it would be appropriate to do so the Commissioner may 35 call a conference of the parties concerned in an endeavour to resolve the matter by agreement between those parties.

(2) Any such conference may be called by a notice in writing signed by the Commissioner notifying the date, time and place of the conference. 40

(3) In addition to the parties or their representatives the Commissioner may also invite to attend the conference any other person whose attendance would in the Commissioner’s opinion be likely to assist in resolving the matter by agreement between the parties.

(4) There may be paid out of the funds of the Commissioner—

(a) to each party or to the representatives of each party, the number to be determined by the Commissioner as being necessary to enable that party to be adequately represented, attending any conference called under this section, and

(b) to any person, other than the Commissioner, attending any conference pursuant to *subsection (3)*,

such fees, allowances and expenses as the Commissioner may see fit to allow.

(5) No evidence shall be admissible in any Court, or before any person acting judicially, of any information, statement or admission disclosed or made to any person in the course of a conference called under this section.

15 **46.**—(1) The Commissioner may from time to time by notice in writing, require any person who, in the Commissioner's opinion, is able to give information relating to any matter under investigation by the Commissioner to furnish such information and to produce such documents or things in the possession or under the control of that person as in the opinion of the Commissioner are relevant to the subject-matter of the investigation. Evidence.

(2) The Commissioner may summon before him or her and examine on oath any person who, in the Commissioner's opinion, is able to give information relating to the matter under investigation and may for that purpose administer an oath to any person so summoned.

30 **47.**—(1) Except as provided in *subsection 2* every person shall have the same privileges in relation to the giving of information to the answering of questions put by and the production of documents and things to the Commissioner or any employee of the Commissioner as witnesses have in any court. Protection and privileges of witnesses, etc.

(2) No person shall be required to supply any information to or to answer any question put by the Commissioner or any employee of the Commissioner in relation to any matter, or to produce to the Commissioner or any employee of the Commissioner any document or thing relating to any matter, in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act or regulations, other than the Official Secrets Act, 1963.

40 (3) No person shall be liable to prosecution for an offence against any enactment, other than *section 55*, by reason of that person's compliance with any requirement of the Commissioner or any employee of the Commissioner under *section 46*.

45 (4) Where the attendance of any person is required by the Commissioner under *section 46* the person shall be entitled to the same fees, allowances and expenses as if the person were a witness in a court and, for this purpose, the Commissioner shall have the powers of a court to fix or disallow, in whole or in part, or to increase any amounts so payable.

Proceedings privileged.

48.—(1) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner or an advocate under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court. 5

(2) For the purposes of the law of defamation any report made under this Act by the Commissioner shall be absolutely privileged.

Adverse comment.

49.—The Commissioner shall not, in any report or recommendation made or published under this Act, make any comment that is adverse to any person unless— 10

(a) that person has been given a reasonable opportunity to be heard and to make a written statement in answer to the adverse comment, and

(b) where that person so requires, there is included in or appended to the report or recommendation either the written statement referred to in *paragraph (a)* or a fair and accurate summary of that statement, whichever the Commissioner considers is more appropriate in the circumstances. 15

Delegation of functions and powers.

50.—(1) The Commissioner may from time to time delegate to any person holding office under the Commissioner all or any of the Commissioner's functions and powers under this Act or any other Act. 20

(2) No delegation under *subsection (1)* shall include—

(a) the power to delegate under that subsection, 25

(b) the functions of the Commissioner under *Part 2*,

(c) the power to designate any person under *section 15(1)* or *section 35(1)* or to revoke any such designation, or

(d) the power to make any recommendation or report under this Act. 30

(3) No function or power of the Commissioner under *Part 5* or *section 45* shall be delegated under *subsection (1)* to the Director of Proceedings.

(4) The Director of Proceedings may from time to time, with the prior approval of the Commissioner in each case, delegate to any person holding office under the Commissioner all or any of the functions and powers of the Director of Proceedings under this Act or any other Act. 35

(5) The Director of Disability Advocacy may from time to time, with the prior approval of the Commissioner in each case, delegate to any person holding office under the Commissioner all or any of the functions and powers of the Director of Advocacy under this Act or any other Act. 40

(6) No delegation under *subsection (4)* shall be to the Director of Advocacy. 45

(7) No delegation under *subsection (5)* shall be to the Director of Proceedings.

51.—(1) Every delegation under *section 50* shall be in writing.

Further provisions relating to delegations.

5 (2) The power to delegate under *section 50* does not limit any power of delegation conferred on the Commissioner or the Director of Proceedings or the Director of Disability Advocacy by any other Act.

10 (3) Subject to any general or special directions given or conditions imposed by the person by whom the delegation is made, the person to whom any functions or powers are delegated under *section 50* may exercise any functions or powers so delegated to that person in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation.

15 (4) Every person purporting to act pursuant to any delegation under *section 50* shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under *section 50* may be made—

20 (a) to any specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or a specified class of offices,

(b) subject to such restrictions and conditions as the person by whom the delegation is made thinks fit,

25 (c) either generally or in relation to any particular case or class of cases.

30 (6) No delegation under *section 50* shall affect or prevent the exercise of any function or power by the Commissioner or, as the case requires, the Director of Proceedings or the Director of Disability Advocacy, nor shall any such delegation affect the responsibility of the Commissioner for the actions of any person acting under the delegation.

35 **52.**—Any person purporting to exercise any power of the Commissioner or, as the case requires, the Director of Proceedings or the Director of Advocacy by virtue of a delegation under *section 50* shall, when required to do so, produce evidence of that person’s authority to exercise the power.

Delegate to produce evidence of authority.

53.—(1) Every delegation under *section 50* shall be revocable in writing at will.

Revocation of delegations.

40 (2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the person by whom the delegation was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the person by whom the delegation was made.

45 **54.**—(1) In this section, the term “employing authority” means a health care provider or a disability services provider.

Liability of employer and principal.

(2) Subject to *subsection (5)* anything done or omitted by a person as the employee of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person whether or not it was done or omitted with that employing authority's knowledge or approval. 5

(3) Anything done or omitted by a person as the agent of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person unless it is done or omitted without that employing authority's express or implied authority, precedent or subsequent. 10

(4) Anything done or omitted by a person as a member of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person unless it is done or omitted without that employing authority's express or implied authority, precedent or subsequent. 15

(5) In any proceedings under this Act against an employing authority in respect of anything alleged to have been done or omitted by an employee of that employing authority, it shall be a defence for that employing authority to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing or omitting to do that thing or from doing or omitting to do as an employee of the employing authority things of that description. 20

Offences. **55.**—Every person commits an offence under this Act and is liable on summary conviction to a fine not exceeding €3,000 who— 25

(a) without reasonable excuse obstructs, hinders or resists the Commissioner or any other person in the exercise of their powers under this Act,

(b) without reasonable excuse refuses or fails to comply with any lawful requirement of the Commissioner or any other person under this Act, 30

(c) makes any statement or gives any information to the Commissioner or any other person exercising powers under this Act knowing that the statement or information is false or misleading, 35

(d) represents directly or indirectly that he or she holds any authority under this Act when he or she does not hold that authority.

Regulations. **56.**—(1) The Minister may make regulations prescribing a Code of Disability Rights. 40

(2) In addition to the power conferred by *subsection (1)* the Minister may make regulations for all or any of the following purposes:

(a) prescribing the procedure for the service of notices and other documents under this Act, 45

(b) providing for matters referred to in this Act as prescribed or to be prescribed and for such other matters as are contemplated by or necessary for giving effect to this Act and for its due administration.

(3) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

5 (4) Where the Minister proposes to make regulations under this section he or she shall cause a draft of the regulations to be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each such House.

10 **57.—**(1) This section applies where any regulations are proposed to be made under *section 56*—

Where regulations proposed against or without advice of Commissioner.

15 (a) as a result of any draft Code or any draft amendments to a Code forwarded to the Minister by the Commissioner, where the regulations differ in any material respect (other than in matters of drafting style) from the draft so forwarded, or

(b) other than in accordance with, or in the absence of a recommendation of the Commissioner.

20 (2) where this section applies the Minister shall, at the same time as he or she causes a draft of the proposed regulations to be laid before each House of the Oireachtas, cause to be laid before each such House a statement setting out the following matters:

(a) where *paragraph (a) of subsection (1)* applies—

25 (i) the respects in which the draft regulations differ in a material respect (other than in matters of drafting style) from the draft forwarded by the Commissioner, and

(ii) the reasons for the differences,

30 (b) where *paragraph (b) of that subsection* applies the reasons why the regulations were made other than in accordance with, or in the absence of, a recommendation of the Commissioner.