



AN BILLE UM CHOMHAIRLE (LEASÚ) 2004
COMHAIRLE (AMENDMENT) BILL 2004

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

1. Definition.
2. Amendment of section 2(1) of Principal Act.
3. Amendment of section 7(1) of Principal Act.
4. Personal advocates.
5. Amendment of section 9 of Principal Act.
6. Amendment of section 11 of Principal Act.
7. Short title, collective citation and commencement.

ACTS REFERRED TO

Comhairle Act 2000

2000, No. 1

Data Protection Acts 1988 and 2003

Petty Sessions (Ireland) Act 1851

14 & 15 Vict., c. 93



**AN BILLE UM CHOMHAIRLE (LEASÚ) 2004
COMHAIRLE (AMENDMENT) BILL 2004**

BILL

entitled

5 AN ACT TO AMEND THE COMHAIRLE ACT 2000 TO
AMEND AND EXTEND THE FUNCTIONS OF COMH-
AIRLE, TO MAKE CERTAIN CHANGES TO ITS MEM-
BERSHIP AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 **1.**—In this Act “Principal Act” means Comhairle Act 2000. Definition.

2.—Section 2(1) of the Principal Act is amended by the insertion Amendment of
section 2(1) of
Principal Act.
of the following definitions:

“ ‘the Director’ has the meaning assigned to it by section 7A;

15 ‘disability’, in relation to a person, means a substantial restriction in
the capacity of the person to carry on a profession, business or occu-
pation 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;

20 ‘Personal Advocacy Service’ has the meaning assigned to it by
section 7A;

‘personal advocates’ has the meaning assigned to it by section 7A;

‘qualifying person’ has the meaning assigned to it by section 7A;

25 ‘social service’ means any service provided by a statutory body or
voluntary body that is available or accessible to the public generally
or a section of the public pursuant to statute or otherwise and
includes, but is not limited to, a service in relation to any of the
following, namely, health, social welfare, education, family support,
housing, taxation, citizenship, consumer matters, employment and
training, equality, asylum and immigration;”.

30 **3.**—Section 7(1) of the Principal Act is amended by the substi- Amendment of
section 7(1) of
Principal Act.
tution of the following paragraphs for paragraphs (b) and (c):

“(b) to support the provision of or, where the Board considers
it appropriate, to provide directly, advocacy services to

individuals, in particular those with a disability, that would assist them in identifying and understanding their needs and options and in securing their entitlements to social services,

- (bb) to provide, or to arrange for the provision of, a Personal Advocacy Service to qualifying persons and, in so doing, the Board shall take account of the following:
 - (i) the financial resources of the Board; and
 - (ii) whether qualifying persons can obtain advocacy services otherwise than under this Act,
- (c) to support, promote and develop—
 - (i) greater accessibility, co-ordination and public awareness of social services, and
 - (ii) the provision and dissemination of integrated information in relation to such services by statutory bodies and voluntary bodies,”.

Personal advocates. 4.—The Principal Act is amended by the insertion of the following sections after section 7:

“Personal
Advocacy
Service.

7A.—(1) The Chief Executive may designate such and so many members of the staff of the Board as he or she considers appropriate to be personal advocates to qualifying persons (hereinafter referred to as ‘personal advocates’) and a person so designated shall hold office as a personal advocate for such period as the Chief Executive may determine.

(2) A person is a qualifying person for the purposes of this Act if—

(a) he or she is not less than 18 years of age and, in the opinion of the Director—

(i) is, by reason of a disability, unable to obtain or has difficulty in obtaining a particular social service or services without the assistance or support of a personal advocate, and

(ii) there are reasonable grounds for believing that there is, in relation to the person, a risk of harm to his or her health, welfare or safety if he or she is not provided with the social service or services that he or she is seeking to obtain,

or

(b) he or she is under 18 years of age and—

(i) his or her sole parent or guardian is a qualifying person, or

(ii) he or she has a disability or, in relation to whom, in the opinion of the Director, there are reasonable grounds for believing that he or she has a disability, and in either case the circumstances are such that it would be unreasonable to expect a parent or guardian of the person to act on his or her behalf in obtaining a particular social service or services without the assistance or support of a personal advocate,

and, in the opinion of the Director, there are reasonable grounds for believing that there is, in relation to the person, a risk of harm to his or her health, welfare or safety if he or she is not provided with the social service or services that he or she is seeking to obtain.

(3) The Board shall have regard to the following to determine the order of priority to be accorded to different qualifying persons in the assignment of personal advocates to such persons:

(a) the needs of qualifying persons to have personal advocates assigned to them;

(b) the degrees of risk of harm to the health, welfare or safety of qualifying persons if they are not provided with the social service or services that they are seeking to obtain;

(c) the benefits likely to accrue to qualifying persons if personal advocates are assigned to them;

(d) the availability to qualifying persons of advocacy services otherwise than under this Act; and

(e) such other matters as the Board considers appropriate or as may be prescribed by regulations made by the Minister.

(4) The service provided to qualifying persons under this section and sections 7B to 7D shall be known, and is in this Act referred to, as the 'Personal Advocacy Service'.

(5) The Board may, with the approval of the Minister and the consent of the Minister for Finance, appoint a person who shall be known as the Director of the Personal Advocacy Service, and is referred to in this Act as 'the Director', to

perform the functions conferred on the Director by this Act.

(6) Subsections (2) and (4) of section 14 shall apply to the Director in the same manner as they apply to other members of the staff of the Board. 5

(7) The Director shall manage and control the Personal Advocacy Service and shall be responsible to the Chief Executive for such management and control.

(8) The functions of the Director under section 7B may be performed by such members of the staff of the Board as the Director may authorise in that behalf. 10

(9) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations. 15

(10) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder. 20 25

Application for assignment of personal advocate.

7B.—(1) A person who is of opinion that he or she is a qualifying person (in this section referred to as an ‘applicant’) may apply in writing, or such other form as may be specified by the Minister, to the Director for the assignment of a personal advocate to him or her and he or she shall specify in the application the social service or services that he or she is seeking to obtain. 30 35

(2) The Director shall determine whether or not an applicant is a qualifying person and, if he or she is satisfied that the applicant is such a person, he or she shall assign a personal advocate to the applicant in accordance with this Act. 40

(3) A decision to grant or to refuse to grant an application under subsection (1) shall be made and the applicant concerned shall be notified of it by the Director in writing, or such other form as may be specified by the Minister, as soon as practicable after the receipt by the Director of the application. 45

(4) If the grant of an application under subsection (1) is refused, the notification under subsection (3) shall specify the reasons for the refusal and state that the applicant concerned may apply to the Chief Executive under subsection (5) for 50

a review of the decision within the period specified in subsection (6).

5 (5) The Chief Executive, on application to him or her in that behalf in writing, or such other form as may be specified by the Minister, by the applicant concerned—

(a) may review the decision concerned, and

10 (b) following the review, may, as he or she considers appropriate, affirm or reverse that decision,

and if the decision is reversed, the application under subsection (1) concerned shall be deemed to have been granted.

15 (6) An application under subsection (5) shall be made not later than 21 days after the applicant concerned is notified of the decision of the Director under this section or, in a case in which the Chief Executive is of opinion that there are reasonable grounds for extending that period, the expiration of such longer period as he or she may determine.

20 (7) A decision under subsection (5) shall be made and the applicant concerned shall be notified of it by the Chief Executive in writing, or such other form as may be specified by the Minister, as soon as practicable after the receipt by the Chief Executive of the application under that subsection concerned.

25 (8) If a refusal to grant an application under subsection (1) is affirmed by the Chief Executive under subsection (5), the notification under subsection (7) shall specify the reasons for so doing.

30 (9) An application under subsection (1) or (5) may be made by any other person on behalf of the applicant concerned.

35 Functions of personal advocate.

7C.—(1) A personal advocate assigned to a qualifying person under section 7B shall—

40 (a) if appropriate, make or assist in making an application for an assessment under *Part 2* of the *Disability Act 2004* in respect of the person and assist, support and represent the person in accordance with the said *Part 2* in relation to the application, assessment and the service statement (if any) prepared in respect of the person,

45 (b) assist, support and represent the person—

50 (i) to apply for and obtain a social service or services specified in

the application under section 7B(1) concerned or, if appropriate, in a service statement prepared in respect of the person, and 5

- (ii) if the personal advocate considers it appropriate to do so, to pursue any right of review, reference or appeal to a body other than a court if the application for such service or services is refused, 10

and

- (c) for the purpose of assisting the person to promote the best interests of his or her health, welfare and well-being, provide support or training or both to— 15

- (i) the person, or

- (ii) a member of the person's family, a carer of the person or any other person, including a member of an organisation or group, who is actively involved in promoting the health, welfare or well-being of the person, 20 25

or both for so long as the personal advocate is performing functions under paragraph (a) or (b) in respect of the person.

(2) A personal advocate assigned to a qualifying person under section 7B may, for the purpose of performing his or her functions, at any reasonable time enter any place where day care, residential care or training is provided for the person and make such inquiries in such place in relation to the person as he or she considers appropriate. 30 35

(3) Subject to the Data Protection Acts 1988 and 2003, a personal advocate assigned to a qualifying person under section 7B may, for the purpose of performing his or her functions, do all or any of the following: 40

- (a) obtain from a statutory body or voluntary body any information relating to the person that the personal advocate considers necessary;
- (b) attend and represent the person at any meeting, consultation or discussion at which the interests of the person are being considered and which the person would have attended if he or she were not a qualifying person; and 45 50

(c) identify any person referred to in subsection (1)(c)(ii) who may assist the qualifying person.

5 (4) A statutory body or voluntary body that provides social services shall co-operate with a personal advocate in the performance of his or her functions.

10 (5) A person who by act or omission obstructs or hinders a personal advocate in the performance of his or her functions shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 or imprisonment for a term not exceeding 3 months or both.

15 (6) Proceedings for an offence under this section may be brought and prosecuted by the Minister.

20 (7) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted within 12 months from the date of the offence.

25 (8) In this section ‘application’, ‘assessment’ and ‘service statement’ have the meanings assigned to them respectively by *Part 2* of the *Disability Act 2004*.

Arrangement to provide services of personal advocates.

30 7D.—The Board, with the approval of the Minister and subject to such terms and conditions as are considered appropriate, may arrange for the functions of personal advocates under section 7C to be performed by persons other than members of the staff of the Board and sections 7A to 7C shall, with any necessary modifications, apply to such persons.”.

5.—Section 9 of the Principal Act is amended—

Amendment of section 9 of Principal Act.

35 (a) in subsection (1), by the substitution of “15 members” for “20 members”,

(b) in subsection (4), by the substitution of the following paragraph for paragraph (b):

40 “(b) 3 members who represent persons with a disability, and”,

(c) in subsection (12), by the substitution of “6 members” for “8 members” in both places where it occurs, and

(d) by the deletion of subsection (13).

45 6.—Section 11 of the Principal Act is amended by the substitution of the following subsection for subsection (3):

Amendment of section 11 of Principal Act.

“(3) The quorum for a meeting of the Board shall be 8 or such lesser number (being not less than 5) as the Board may from time to time determine.”.

Short title,
collective citation
and
commencement.

7.—(1) This Act may be cited as the Comhairle (Amendment) Act 2004.

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(2) The Comhairle Act 2000 and this Act may be cited together as the Comhairle Acts 2000 and 2004.

(3) This Act shall come into operation on such day or days as the Minister for Social and Family Affairs may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

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