



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

EXPLANATORY MEMORANDUM

Introduction

This Bill is a key element of the Government's legislative programme for improving services for people with disabilities. The combination of this Bill, the Disability Bill 2004 and accompanying Outline Sectoral Plans and the "Education for Persons with Special Educational Needs Act 2004" are intended to convey clearly the Government's intention to have an effective combination of legislation, policies, institutions and services in place to support and reinforce equal access for people with disabilities.

Purpose of the Bill

The purpose of the Bill is to amend the Comhairle Act 2000 so as to confer enhanced and additional functions on Comhairle involving, *inter alia*, the introduction of a personal advocacy service specifically aimed at people with disabilities. The Bill also seeks to make certain changes to the membership of the Board of Comhairle and to provide for related matters.

Context

Provisions relating to the introduction by Comhairle of a personal advocacy service and the sign language interpretation service were included in the former Disability Bill 2001. It was subsequently felt that those new services would result in such fundamental changes to the functions of Comhairle as to require a Comhairle (Amendment) Bill which would seek to amend the functions of Comhairle in line with Government policy.

Comhairle already has a statutory remit in relation to advocacy services under the Comhairle Act 2000 as reflected in its mission of information, advice and advocacy. These three elements have obvious links in ensuring that citizens have access to accurate, comprehensive and clear information on social services and should be regarded as a continuum of action towards meeting Comhairle's mission.

Sign Language Interpretation Service

It was intended that this Bill would provide for the introduction of a sign language interpretation service for people who are deaf or have a hearing impairment. It has been decided, however, due to certain difficulties which came to light during the drafting of those provisions that they should be removed from the Bill and introduced by way of an administrative scheme. It is felt that the provision of this service by way of primary legislation is not necessarily the most effective way of delivering a sign language interpretation service

which most likely will be contracted out to an appropriate service provider.

The Minister for Social and Family Affairs has power in the Comhairle Act 2000 to request Comhairle to design schemes relating to social services in order to address needs identified by the Minister concerning such services. The Minister proposes, therefore, to request Comhairle to prepare such a scheme relating to sign language interpretation services and to submit it for her approval. It is intended that the scheme, as approved by the Minister, will form part of her Department's Sectoral Plan as provided for under the Disability Bill and will be published in the final version of that Plan.

Main Provisions of the Bill

Sections 1 and 2 provide for definitions of the terms used in the Bill, including "disability" and "social service". The definition of disability used is that contained in the Disability Bill 2004. Other definitions are included in relevant sections as appropriate.

Section 3 amends and extends the statutory functions of Comhairle in three ways:—

- to provide for a personal advocacy service for people with disabilities who meet the criteria of qualifying persons having regard to the financial resources of Comhairle and whether or not advocacy services are provided elsewhere,
- to enhance an existing function of supporting the provision of, or providing directly, advocacy services for individuals, particularly those with a disability, and
- to provide an enhanced role for Comhairle in supporting and promoting greater accessibility and public awareness of social services and the provision and dissemination of integrated information in relation to those services through a wider definition of what constitutes social services as set out in *section 2*.

Section 4 provides for the details of the personal advocacy service, including—

- the provision of a personal advocacy service to qualifying persons by personal advocates who are designated as such by the Chief Executive of Comhairle.
- the appointment by the Board of Comhairle of a Director of the personal advocacy service who shall be responsible for the management and control of the service and who shall be accountable to the Chief Executive for the performance of those functions.
- a definition of a qualifying person which, in the case of a person 18 years of age or older, is a person who in the opinion of the Director is, by reason of a disability, unable to obtain or has difficulty in obtaining a particular social service without the assistance or support of a personal advocate and there are reasonable grounds for believing that there is a risk to the person's health, welfare or safety if he or she is not provided with the social service in question. A person under 18 years of age is a qualifying person if his or her sole parent or guardian is a qualifying person or if he or she has a disability, or in the opinion of the Director there are reasonable grounds for believing that he or she has a disability, and the circumstances are such that it would be unreasonable to expect a parent or guardian to

act on his or her behalf in obtaining a particular social service without the assistance or support of a personal advocate and, in the Director's opinion, there are reasonable grounds for believing there is a risk to the person's health, welfare or safety if he or she is not provided with the social service in question.

- the criteria to which the Board shall have regard in determining the order of priority to be accorded to different qualifying persons, including the needs of qualifying persons to have personal advocates assigned to them, the benefits likely to accrue to qualifying persons of having personal advocates assigned to them and the degrees of risk of harm to their health, welfare or safety if they are not provided with the social service they are seeking to obtain.
- arrangements for making application to the personal advocacy service for the assignment of a personal advocate, for the decision process on that application, and for a review process where the applicant is not satisfied with the decision given.
- the role of the personal advocate in terms of
 - assisting, supporting and representing the qualified person to apply for and obtain a social service, including an application for an assessment of need, an assessment of need or a service specified in a service statement under the provisions of the Disability Bill 2004;
 - pursuing any right of review or appeal on behalf of the qualifying person;
 - for the purpose of assisting the qualifying person to promote the best interests of his or her health, welfare and well-being, providing support and training to that person and any member of his or her family, a carer or any other person representing the interests of the qualifying person;
 - entering any place that provides day care, residential care or training for the qualifying person for the purpose of representing his or her interests; and
 - subject to the requirements of data protection legislation, accessing information, attending meetings or consultations, and identifying any person who may assist the qualifying person for the purpose of performing his or her functions.
- the requirement that statutory or voluntary bodies shall cooperate with a personal advocate in the performance of his or her functions and provision for offences to apply to persons who obstruct or hinder a personal advocate in that context.
- provision for the making of regulations as may be required subject to the usual requirements as regards laying them before each House of the Oireachtas.
- a provision enabling the Board of Comhairle, with the approval of the Minister and subject to such terms and conditions as are considered appropriate, to arrange for the functions of personal advocates to be performed by persons other than members of the staff of the Board.

Sections 5 and 6 provide for changes to the membership of the Board of Comhairle. In the light of operational experience since the Board was first constituted in June 2000, it is being reduced from 20 to 15 members. This reduction necessitates consequential adjustments to the number of members representing people with disabilities (which is being reduced from 5 to at least 3) and the arrangements for a quorum for Board meetings (which is being reduced from 11 members to a number between 8 and 5 as determined by the Board from time to time). In the context of the reduced Board membership and having regard to Government mainstreaming policy, the nominating role of the Minister for Justice, Equality and Law Reform in relation to members representing people with disabilities is being removed. There will be no change in the gender balance of the Board i.e. at least 40 per cent will be female members as provided for in the Comhairle Act 2000.

Section 7 sets out standard provisions relating to the short title, collective citation and commencement arrangements for the implementation of the Bill. Different commencement dates will apply to different sections of the Bill.

Financial Implications

It is intended that the resources necessary to introduce the new personal advocacy service set out in this Bill will be sought by way of an additional allocation to Comhairle which is funded by the Department of Social and Family Affairs. Estimates as to the additional funds required in respect of the new service are currently being prepared in the context of a detailed examination of all aspects of the new service, including best estimates of take up among people with disabilities and models of best practice in other jurisdictions.

*An Roinn Gnóthaí Sóisialacha agus Teaghlaigh,
Meán Fómhair, 2004.*