



AN BILLE UM MÍCHUMAS 2004
DISABILITY BILL 2004

EXPLANATORY MEMORANDUM

Introduction

The Disability Bill is part of the Agreed Programme for Government and a commitment in “Sustaining Progress”. The Bill is a key part of the National Disability Strategy being put in place by Government to underpin the equal participation of people with disabilities in society. Other elements of the strategy are—

- the Comhairle (Amendment) Bill 2004 which will provide for advocacy services for people with disabilities,
- outline sectoral plans for each of six key public service sectors, and
- a commitment to a multi-annual Investment Programme for disability support services.

The Bill comprises seven Parts as follows:—

Part 1 contains definitions, including the meaning of disability, sets out the basis for the provision of resources for the Bill, and includes certain provisions relating to orders;

Part 2 deals with the assessment of need, service statements and related redress mechanisms;

Part 3 deals with access to public buildings, services and information as well as sectoral plans for key public sector services such as transport, employment and health;

Part 4 limits the use of genetic data;

Part 5 deals with targets and positive action for the employment of people with disabilities in the public service;

Part 6 provides for the establishment of a Centre for Excellence in Universal Design; and

Part 7 covers a range of different provisions, covenants in leases, broadcasting for people with sensory impairments, changes relating to the board of the National Disability Authority, repeals, offences and exclusions.

Schedule contains detailed provisions relating to the independent Appeals Officer under Part 2 of the Bill and his or her staff.

PART 1

PRELIMINARY AND GENERAL

Section 1 deals with the short title of the Bill and commencement.

Section 2 sets out definitions for the key terms used in the Bill. The definition of “disability” is in keeping with those in the National Disability Authority Act 1999 and the Education for Persons with Special Educational Needs Act 2004. “Public body” is defined broadly to include public service organisations and both commercial and non-commercial state bodies.

Section 3 deals with the making of regulations and orders.

Section 4 is a standard provision relating to funding for administering the Act.

Section 5 establishes the basis upon which each Minister will make financial resources available in each year, for the provision of services under the Act. In deciding on the allocation, each Minister will make available such amount as he or she considers appropriate, taking account of the need also to provide an appropriate amount for the performance of his or her other functions in that year. Having made such a considered allocation, nothing in the legislation will require him or her, or any public body to which this funding has been allocated, to provide a service which cannot be met out of that allocation.

PART 2

ASSESSMENT OF NEED, SERVICE STATEMENTS AND REDRESS

This Part establishes an entitlement to an assessment of need and to the services set out in a related service statement. The contents of the service statement are subject to a number of considerations including resource constraints. There are complaints and appeals procedures if these entitlements are not delivered and decisions taken under these procedures, if not acted upon by the service provider, can be enforced through the Circuit Court.

Section 6 defines the key terms used in this Part.

An “assessment” is defined as an assessment of health and education needs occasioned to a person with a disability and the health services and education services that may be required to meet those needs.

A “health service” is defined to cover both a health and a personal social service. “Education service” includes education in a recognised school, as well as certain other programmes of education, training or instruction for persons with disabilities aged over 18 years.

“Disability” for the purposes of this Part covers people for whom a substantial restriction is, or is likely to be, permanent, result in a significant difficulty in communication, learning or mobility and gives rise to a continuous need for services.

The “Minister” for the purposes of this Part is the Minister for Health and Children.

The section assigns additional functions to the National Council for Special Education for the purposes of the Part.

Section 7 provides for the appointment of assessment officers by each health board (*subsection (1)*). Assessment officers will be responsible for providing or arranging assessments of need, and for involving the National Council for Special Education as necessary (*subsections (2) and (3)*). They will be independent in performing their functions (*subsection (4)*). Assessments must be carried out without regard to the cost or to the capacity to provide the service (*subsection (5)*).

Each assessment will be in writing and will include a decision as to whether a person has a disability, the extent of the disability, a statement of the services needed and the timeframe within which these services should ideally be provided. Each assessment will have a review date. A copy of the assessment report will be furnished to the applicant, the health board and, where appropriate, the National Council for Special Education (*subsections (6) and (7)*). *Subsection (8)* provides for the involvement of the person with a disability in the assessment. If the assessment relates to a child, any educational service needs identified will be referred to be dealt with under the Education for Persons with Special Educational Needs Act 2004 (*subsection (9)*).

Section 8 allows any person who considers that he or she may have a disability to apply in writing for an assessment (*subsection (1)*). If the person, because of their disability, is not in a position to apply personally, their spouse, parent, relative, guardian, legal representative or a personal advocate appointed by Comhairle, can request an assessment on their behalf (*subsection (2)*). The health board can also initiate an assessment (*subsection (4)*). An assessment must begin within three months of the receipt of the application and must be carried out as soon as possible (*subsection (5)*).

Subsection (6) seeks to avoid duplication of assessments under the Bill and the Education for Persons with Special Educational Needs Act 2004. The health board may refuse a further assessment before the review date, or in the case of a child, within 12 months of the previous assessment (*subsection (7)*). 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 (*subsection (8)*).

Section 9 provides that assessments will be carried out in accordance with standards determined by a body specified by the Minister for Health and Children. The body, the Health Information and Quality Authority, will be established as an independent statutory agency and will be part of the new health infrastructure. The same body will be responsible for standards under the Education for Persons with Special Educational Needs Act 2004.

Section 10 provides for the appointment by health boards of liaison officers as key contact points for the preparation of individual service statements (*subsection (1)*). An individual service statement will set out the health and education services to be provided to the person concerned and the timeframe within which they will be provided (*subsection (2)*). Liaison officers can request the assistance of the National Council for Special Education in preparing service statements (*subsections (3) and (4)*). Service statements under the Act will not deal with education services for a child, as these services come within the scope of the Education for Persons with Special Educational Needs Act 2004 (*subsection (5)*).

Liaison officers will prepare the service statement based on the assessment report, the eligibility of the applicant for services, standards or codes of practice relative to those services; the practicability of providing the service and the financial obligations of the service provider (*subsection (6)*). The liaison officer will ensure that the applicant and relevant service providers get copies of the service statement (*subsection (7)*). The liaison officer may amend the service statement in light of a change in the person's circumstances or for any of the considerations set out in *subsection (6)* (*subsections (8)* and *(9)*). The liaison officer is also charged with arranging for the delivery of services in the service statement with the assistance of the National Council for Special Education, where appropriate (*subsections (10)* and *(11)*).

Section 11 allows the liaison officer, with the consent of the applicant, to contact providers of services outside the health and education sectors about services on his or her behalf. Any public body, so contacted, must then respond to the liaison officer or to the individual to facilitate access to any relevant personal or individual service to which the person may be entitled. Any actions taken under this section must be in line with the rules for processing personal data under the Data Protection Acts.

Section 12 requires health boards to keep records of people who are being assessed or are receiving services in accordance with this legislation or the Education for Persons with Special Educational Needs Act 2004 so as to support the planning of these services. Each year, the health board must submit to the Minister for Health and Children a report of the overall service needs identified in assessment reports and the optimum timing for service delivery. The records kept and the reports made under this section must be in accordance with the requirements of the Data Protection Acts.

Section 13 provides a means for complaint in relation to assessments and service statements. An applicant or a person representing him or her, may complain to the health board about an assessment that finds the person does not have a disability; about the failure of the assessment to comply with standards; about the contents of the service statement; or about the failure by a service provider to provide or to fully provide a service specified in the service statement.

Section 14 deals with procedural matters relating to complaints. It provides for the appointment of independent complaints officers (*subsections (1)* and *(2)*). On receipt of a complaint, the complaints officer may refuse to deal with it on the grounds that it is frivolous or vexatious and shall so inform the parties (*subsections (3)* and *(4)*). The complaints officer will examine a complaint and seek to resolve it informally in the first instance, if that is appropriate (*subsection (5)*). If the complaint is not to be resolved informally, the complaints officer will investigate the complaint and give all those involved the opportunity to be heard. The complaints officer will then issue a written report of his or her finding and recommendation in writing and in doing so will have regard to the matters referred to in *section 10(6)* of the Bill including the financial obligations of the service provider (*subsections (6)*, *(7)* and *(8)*).

The complaints officer will carry out his or her work in private and may subsequently correct verbal or formal errors in the recommendation (*subsections (9)* and *(10)*).

The chief executive officer of the health board is required to implement the recommendation unless he or she is of the opinion that to do so would result in expenditure or indebtedness beyond

what the Minister has provided for under the Health (Amendment)(No. 3) Act 1996; it is not possible or practical to provide the service specified or to do so in the time allowed; or the applicant is not eligible for the service (*subsection (11)*). Similarly, the head of an education service provider must implement the recommendation unless it would result in expenditure beyond what they have been allocated or it is not practicable to provide the service or to provide it in the time required (*subsection (12)*). If the chief executive officer or head of an education service provider decides not to provide a service, the complaints officer and the applicant must be informed in writing of the decision and the reasons for it (*subsection (13)*).

Section 15 provides for the appointment of an appeals officer by the Minister for Health and Children. The appeals officer will consider and decide on appeals from a complaints officer's recommendation or from a decision of a chief executive officer in a health board or the head of an education service provider under this Part of the Bill. The appeals officer will be independent. The Schedule to the Bill sets out the terms and conditions of the appeals officer's appointment and those of his or her staff.

Section 16 requires the appeals officer to prepare a report on his or her work for the Minister each year and makes provision for the Minister to lay a copy of the report before the Houses of the Oireachtas.

Section 17 sets out the procedures for appeals and enforcement. An applicant, or his or her representative, can appeal against the recommendation of a complaints officer, or a decision under *section 14*, of a chief executive officer of a health board or a head of an education service provider. The notice of appeal must be in writing and on receipt the appeals officer is required to give the parties an opportunity to be heard (*subsections (1) and (2)*).

The appeals officer is empowered to make a written determination, which is binding on the parties. He or she can make whatever inquiries he or she considers necessary and can require a complaints officer, an assessment officer or a liaison officer to make further inquiries within a specified timeframe (*subsections (3) and (4)*).

An appeals officer can enter premises and search for, copy or retain documentation which he or she considers necessary for the purposes of an appeal. The appeals officer can require a person (subject to certain immunities) to appear before him or her to give information or any document or thing in his or her possession or control, which is pertinent to the appeal (*subsections (5) to (8)*). The appeals officer may establish procedures for hearing cases and is given significant statutory powers in relation to summoning witnesses and discovering documents for the purpose of an oral hearing (*subsections (9) to (11)*). False witness, in these circumstances, will be regarded as perjury (*subsection (12)*). Witnesses generally will have the same privileges and immunities as a witness in court (*subsection (13)*). Oral hearings will take place in private (*subsection (14)*).

An applicant will not be required to attend before an appeals officer if such attendance might be prejudicial to his or her well-being (*subsection (16)*). A person who does not appear before an appeals officer or refuses to supply information or gives false information will be guilty of an offence (*subsection (17)*). In coming to a determination, the appeals officer must have regard to relevant issues, including the matters referred to in *section 10(6)* of the Bill,

some of which relate to the financial obligations of the service provider (*subsection (18)*). He or she may correct verbal or formal errors in the determination (*subsection (19)*). An appeals officer's determination will be a public document (*subsection (20)*). Provision is made for certain documents to be covered by absolute privilege (*subsections (15) and (21)*).

Section 18 provides for mediation in suitable cases. 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 applicant has an objection the matter will be dealt with under *section 17*. 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 outcome of a mediation settlement can be enforced under *section 21* in the same way as a determination of the appeals officer.

Section 19 gives a right of appeal to the High Court on a point of law from a determination of the appeals officer.

Section 20 gives the Minister for Health and Children power to make regulations for Part 2. The areas that may be covered by such regulations include the assessment process, the preparation of service statements, complaints and appeals procedures and the identification of persons to represent a person with a disability.

Section 21 provides for enforcement. If the chief executive officer of a health board or an education service provider fails to implement a determination of an appeals officer, a mediated settlement or a recommendation of a complaints officer, the applicant or the appeals officer can apply to the Circuit Court for an order. Such an application can be made once no appeal is pending. The order will direct the chief executive officer of a health board or an education service provider concerned to implement the determination, resolution or recommendation in accordance with its terms.

Section 22 gives the appeals officer the option to go to the District Court to seek a search warrant to enter premises and seize or copy any documentation or remove anything which he or she considers necessary to carry out his or her functions. A person who obstructs or attempts to obstruct the execution of a warrant issued pursuant to this section will be guilty of an offence. There is provision for a fine of up to €3,000 or imprisonment for up to 6 months, or both.

PART 3

ACCESS TO BUILDINGS AND SERVICES AND SECTORAL PLANS

This Part requires public bodies to ensure, over time, that public buildings and services are accessible to people with disabilities. It places an obligation on them to integrate disability service provision with mainstream services, where this is practicable and appropriate. There is also provision for the preparation of sectoral plans in six key sectors. The plans will set out service provision for people with disabilities and measures to facilitate access to them. Complaints procedures and review by the Ombudsman are available in any case where the access required by this Part is not provided.

Section 23 deals with disability access to public buildings (other than heritage sites — see *section 27*). The section requires that public buildings are made accessible (*subsection (1)*). The standard for access is the Part M of the Building Regulations and public buildings

must be compliant with Part M by 2015. In general, after enactment public buildings will have 10 years to comply with any other amendment of Part M (*subsection (3)*).

The Minister may request the National Disability Authority (NDA) to provide guidelines to public bodies in making their public buildings accessible. Following approval by him or her, the guidelines would become an approved code of practice. The section requires public bodies to take account of an approved code of practice, as far as practicable, having regard to their resources and obligations. It provides that they shall do so at the time of construction or new works or if access can be cost effectively provided to more persons as a result (*subsection (2)*).

A Minister may by order exempt certain public buildings from the scope of this section, if he or she is satisfied that the building is in temporary use; is not going to be in use as a public building after three years from the date of an order; or if making it accessible is not justifiable given the costs of doing so and the frequency of its use by people with disabilities (*subsection (4)*). For the purposes of the section, a public building is defined as a building or part of a building to which the public has access and which is occupied, managed or controlled by a public body and Part M of the Building Regulations is Part M as amended (*subsection (5)*). The section will come into operation on 31 December, 2005 (*subsection (6)*).

Section 24 deals with the provision of mainstream public services in a way that is accessible to persons with disabilities. The section requires public bodies to ensure that service provision for people with disabilities is integrated, with services for other citizens, where this is practicable and appropriate. Public bodies are required to give assistance to persons with disabilities for the purpose of accessing these services, if requested. Public bodies are also required to have available to them the expertise and skills necessary for the delivery of accessible services. Public bodies must appoint at least one member of staff to arrange or co-ordinate this assistance. The section comes into operation on 31 December, 2005.

Section 25 requires public bodies to ensure that certain services provided to them by third parties are accessible. The section states that the head of that body must ensure that these services and goods are accessible to persons with disabilities, unless it would not be practicable, or justifiable on cost grounds, or would cause an unreasonable delay in making the goods or services available.

Section 26 deals with the provision of information in formats that are accessible to people with hearing or visual impairments. The section requires public bodies to give to a person with such an impairment, on request, information in a form that is accessible to him or her. The section also requires that electronic information, as far as practicable, is accessible to people with a visual impairment using adaptive technology. The section comes into operation on 31 December, 2005.

Section 27 deals with access to heritage sites. The section requires every public body to make any heritage site in its ownership, management or control, which is accessible to the public, accessible to people with disabilities. The requirement does not apply if disability access would adversely affect conservation or compromise the site. Heritage site is defined to include monuments, heritage buildings and parks, protected structures, nature reserves and national parks. The section comes into operation on 31 December, 2007.

Section 28 provides that the Minister may request the National Disability Authority to prepare draft codes of practice for his approval in relation to any of the matters covered by *sections 24* to *27*. If a public body is compliant with an approved code of practice, the body will be regarded as having met its obligations under the relevant section of the legislation.

Section 29 provides for sectoral plans. The section requires six Ministers — the Minister for Health and Children; the Minister for Social and Family Affairs; the Minister for Transport; the Minister for the Environment, Heritage and Local Government; the Minister for Communications, Marine and Natural Resources; and the Minister for Enterprise, Trade and Employment — to prepare them. Each sectoral plan will provide information on any relevant codes of practice and the complaints, monitoring and review procedures that will apply to the plan. The first such plan must be finalised no later than one year after the commencement of the section and then submitted to the Oireachtas for approval. There is a requirement on each Minister to consult with representatives of people with disabilities before finalising their plan. A sectoral plan may be amended, revoked or replaced.

Section 30 sets out what must be contained in the sectoral plan of the Minister for Health and Children. The plan will give information on services, eligibility criteria and proposed arrangements for the implementation of Part 2 of the Bill. The plan will also deal with the arrangements for co-operation with the Minister for Social and Family Affairs and the Minister for Enterprise, Trade and Employment in relation to the delivery of relevant services.

Section 31 sets out what must be contained in the sectoral plan of the Minister for Social and Family Affairs. The plan will give information on eligibility for payments and on the advocacy and sign language interpretation services to be provided by Comhairle, as well as other information. The plan will also deal with the arrangements for co-operation with the Minister for Health and Children and the Minister for Enterprise, Trade and Employment in relation to the delivery of relevant services.

Section 32 sets out what must be contained in the sectoral plan of the Minister for Transport. The plan will give information on the programme of measures proposed to ensure access for people with disabilities to passenger transport services, the time within which the measures planned will be implemented and arrangements to be made between the Minister and the Minister for the Environment, Heritage and Local Government to facilitate access to public transport vehicles from a public road. Air services or heritage railways do not come within the scope of the section (definition of “passenger transport service” in *section 2*).

Section 33 sets out what must be contained in the sectoral plan of the Minister for Communications, Marine and Natural Resources. This plan will give information about measures to make marine transport passenger services and specified ports and harbours accessible to people with disabilities and the time within which the measures planned will be implemented.

Section 34 sets out what must be contained in the sectoral plan of the Minister for the Environment, Heritage and Local Government. The plan will give information about the measures to be taken to ensure compliance with Part M of the Building Regulations, the measures to be taken to facilitate access to public roads, public places

and services provided by the Minister, local authorities or other public bodies within the Ministers remit and the arrangements to be put in place between the Minister and the Minister for Transport to facilitate access to public transport vehicles from a public road.

Section 35 sets out what must be contained in the sectoral plan of the Minister for Enterprise, Trade and Employment. The plan will give 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 certain other information. The plan will also deal with the arrangements for co-operation with the Minister for Social and Family Affairs and the Minister for Health and Children in relation to the delivery of relevant services.

Section 36 provides that a complaint can be made by a person with a disability, or a person representing him or her, to a public body which fails to comply with the access requirements set out in *sections 23 to 27*.

Section 37 requires each public body to appoint “inquiry officers” to deal with complaints under *section 36*. Inquiry officers will be independent and will investigate complaints and issue a written finding. In the finding, the inquiry officer will set out (unless he or she finds the complaint to be frivolous or vexatious) whether the complaint is well founded and any steps to be taken by the public body to remedy the complaint.

Section 38 amends sections 1, 4, 5, 6 and 7 of the Ombudsman Act 1980. This section broadens the remit of the Ombudsman and, in so doing, provides that the Ombudsman may review a decision of a complaints officer in relation to non-compliance with the terms of a sectoral plan or the determination of an inquiry officer in relation to non-compliance with *sections 23 to 27*.

PART 4

GENETIC TESTING

This Part introduces safeguards for the use of genetic data in general, especially for employment purposes and outlaws its use for insurance purposes. These safeguards will facilitate access for people who may be affected by genetic disorders. The use of family history information for insurance purposes may be restricted by regulation. The provisions of this Part will be subject to review commencing no later than 1 January, 2014.

Section 39 is a definitional section. “Genetic data”; “genetic testing”; and “processing” are defined for the purposes of this Part. The definition of processing is the same as in the Data Protection Acts and this includes the actual obtaining of data.

Section 40 provides that genetic testing may only be carried out where the person who is the subject of the test has given consent for the use of the resulting data in accordance with the Data Protection Acts, unless the testing envisaged is prohibited by law.

The section prohibits the processing of genetic data in relation to the employment of a person unless the processing has been approved beforehand by the Data Protection Commissioner. The section outlaws the processing of genetic data in relation to the assessment of a person for insurance, a pension product/arrangement, or a mortgage. Limitations are also placed on the processing of genetic data for

other purposes by requiring the processor to take all reasonable steps to ensure the person who is the subject of the test, is aware of the purpose and possible outcomes and effects of the data processing. Failure to observe the provisions on processing genetic data will constitute an offence.

Section 41 also provides that information about the family history of an applicant for insurance must be processed in accordance with regulations which the Minister may make under the Data Protection Acts. Before making these regulations, and depending on which financial product the data processing pertains to, the Minister shall consult with either the Data Protection Commissioner, the Minister for Health and Children, the Minister for Social and Family Affairs or the Irish Financial Services Regulatory Authority.

Section 42 requires that the operation of this Part will be reviewed by the Minister not later than 2014. In carrying out the review, the Minister must consult with other relevant Ministers, the Data Protection Commissioner, the Irish Financial Services Regulatory Authority and any other relevant persons or bodies.

Section 43 confirms that nothing in this Part shall authorise the processing of personal data which would be contrary to the Data Protection Acts 1988 and 2003 or prohibit the use of genetic testing by the Garda Síochána for forensic or criminal investigation or other lawful purposes.

PART 5

PUBLIC SERVICE EMPLOYMENT

This Part gives a statutory basis to positive action measures for the employment of people with disabilities in the public service. It places an obligation on each public body to take such measures. It provides that each Minister may specify targets for the employment of people with disabilities in their sector, pending the specification of which the existing 3% employment target will apply. Implementation of the measures will be monitored by sectoral monitoring committees and the National Disability Authority will report to each Minister about compliance in their sector.

Section 44 is definitional and excludes the Defence Forces, the Garda Síochána and prison officers from the provisions of this Part.

Section 45 requires each public body, as far as practicable, to take all reasonable measures to promote and support the employment by them of people with disabilities and to have regard to any codes of practice which have been approved for that purpose. A target of employing 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 competitions, or for the filling of certain vacancies by suitably qualified people with disabilities.

Section 46 requires each Minister to establish a committee to monitor and, in consultation with the NDA, support compliance with this Part. This committee will consist of at least 5 people including a person appointed by the relevant Minister, 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.

Section 47 requires a public body to supply to the Minister, or the NDA, any information they seek for the purposes of determining whether 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. Such measures may include training or education of people with disabilities; amending the specification for particular posts or employment so that people with disabilities may compete for posts with work of equal value; giving priority to suitably qualified people with disabilities; making reasonable alteration to work premises; providing suitable technical or organisational supports; or providing information to employees to increase disability awareness within the public body.

Section 48 provides for the approval of codes of practice to give guidance to public bodies in implementing this Part. It also amends the National Disability Authority Act 1999 for this purpose. Before submitting a draft code of practice to the Minister, the NDA must consult with the relevant monitoring committee and the relevant Minister may approve the code or approve it with amendments. The Minister may also revoke or amend an approved code of practice after consulting the relevant committee and the NDA. In addition, the NDA will include in their Annual Report a specific report on the extent of compliance by public bodies with this Part.

Section 49 confirms that nothing in this Part will preclude the taking of positive action measures referred to in section 33 of the Employment Equality Act 1998.

PART 6

CENTRE FOR EXCELLENCE IN UNIVERSAL DESIGN

This Part establishes a Centre for Excellence in Universal Design which will be based in the NDA. Universal design relates to the design and composition of buildings, products and systems so that they can be accessed by everyone, to the greatest extent practicable, irrespective of any particular physical or mental feature, ability or disability.

Section 50 amends the National Disability Authority Act 1999 by inserting a new Chapter to establish within the NDA a Centre for Excellence in Universal Design. The new Chapter sets out relevant definitions — including a definition of universal design (new section 19A of the National Disability Authority Act). The Centre will be run by staff of the NDA and the chief officer of the Centre will be a member of that staff (new section 19B of the National Disability Authority Act). The purpose of the Centre will be to facilitate the achievement of excellence in universal design by commitment to the development and promulgation of standards. The Centre will have a particular role in pursuing this objective in relation to electronic systems and in the promotion of universal design in courses of training for architects, engineers and other persons who design and build the built environment (new section 19C of the National Disability Authority Act). The NDA may enter into partnerships with private or public bodies to advance the work of the Centre, subject to the consent of the Minister and the Minister for Finance (new section 19D of the National Disability Authority Act).

PART 7

MISCELLANEOUS

This Part deals with a range of issues including covenants in leases that may impact on alterations to allow disability access; rules for

broadcasting to facilitate access by people with sensory impairments; changes to the size of the NDA board and related matters; offences; repeals and exclusions.

Section 51 deals with covenants in leases so that leased premises may be made accessible to people with disabilities with greater ease so as to comply with the provisions of the Act. The section applies to leases that prohibit or impose restrictions on alterations by the lessee. In these circumstances, the prohibition or restriction will not apply and instead the consent of the lessor to the alteration cannot be unreasonably withheld and no fine, or increase in rent, will apply in relation to such consent. Reasonable legal and other costs incurred by the lessor will be payable.

Section 52 imposes additional obligations on the Broadcasting Commission in ensuring that broadcasts are accessible to people with sensory impairments. For this purpose, the section amends section 19 of the Broadcasting Act 2001. The amendment requires the Commission to make rules requiring broadcasters to take specific steps to promote the understanding and enjoyment of their schedule of programmes by persons who have a hearing or a visual impairment. In making these rules, the Commission must ensure that audio-visual material is provided in accessible formats (e.g. sign language, teletext or subtitling) on a daily or regular basis, at popular viewing times and for news programmes.

Section 53 is a standard provision relating to offences by bodies corporate. It provides that directors, managers, etc. acting on behalf of a body, who consent to or approve an action, on behalf of the body, which is proved to be an offence will themselves be guilty of that offence.

Section 54 is a standard provision dealing with penalties for offences. The section provides, on summary conviction, for fines of up to €3,000 or for imprisonment for up to 12 months, or both. There is also provision for a daily fine of up to €350 for every day that the person concerned continues to contravene the legislation.

Section 55 amends sections 20, 21 and 23 of the National Disability Authority Act 1999 which deal with the board of the NDA. Section 20 is amended to reduce the board size from 20 to 12 persons and to provide that 5 of these people must be from organisations representing people with disabilities, their families or carers. There is a consequential reduction, in section 23, of the quorum for meetings of the Authority from 9 to 7 persons. Section 21 is amended to allow members of the board, as well as the Chairperson, to be paid for their services. The section is also amended to allow the Minister to appoint to the first new board, formed after enactment of the amendments, persons who are serving board members with up to two consecutive terms on the NDA board.

Section 56 repeals sections 17 and 18 of the Equal Status Act 2000. These sections provide for regulations relating to accessible transport and have been overtaken by provisions in Part 3.

Section 57 excludes from the scope of the legislation the provision of access where in doing so, the nature of the business of the service provider is fundamentally altered or where there would be a risk to health, safety or welfare.

SCHEDULE
APPEALS OFFICER

The Schedule sets out the terms and conditions of employment of the appeals officer. The appeals officer will be selected by way of a competition held by the Civil and Local Government Appointments Commission and will be appointed by the Minister for Health and Children. The appointment will be for 5 years with the possibility of 2 further terms (paragraphs 1 and 2). Conditions in relation to remuneration and the termination of the appointment are set out. Staff of the appeals officer will be civil servants (paragraphs 3, 4, 5 and 6).

The Minister may delegate his statutory powers relating to the staff to the appeals officer. The appeals officer will be responsible for keeping and reporting on accounts of income and expenditure in accordance with Government procedures (paragraphs 7 and 8). The appeals officer may delegate functions to his or her staff. Where the post becomes vacant, the Minister may appoint a temporary replacement who will have the power to perform all of the necessary functions until the post can be filled (paragraphs 9 and 10).

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Meán Fómhair, 2004.*