

SEANAD ÉIREANN

AN BILLE UM MÍCHUMAS 2004 — AN COISTE DISABILITY BILL 2004 — COMMITTEE

Leasuithe Amendments

SECTION 1

1. In page 5, subsection (1), line 30, to delete “Disability” and substitute the following:

“Assessment and Services For People with Disabilities and Miscellaneous Provisions”.

—Senator Sheila Terry.

SECTION 2

2. In page 6, subsection (1), to delete lines 13 to 17 and substitute the following:

“ ‘disability’, in relation to a person, means a restriction in the capacity of the person to participate in society, including by carrying on a profession, business, or occupation in the State or by participating in social or cultural life in the State, on account of a physical, sensory, mental health or learning disability, or any other condition;”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

3. In page 7, subsection (1), between lines 9 and 10, to insert the following new paragraph subsection (1):

“(i) any private body which provides services and products to the public;”.

—*Senator Sheila Terry.*

4. In page 7, subsection (1), between lines 9 and 10, to insert the following new paragraph:

“(i) any body which is publicly appointed, which is funded by public money or which carries out public functions designated by law;”.

—*Senator Sheila Terry.*

SECTION 5

5. In page 8, subsection (2), lines 44 and 45, to delete “as he or she considers appropriate” and substitute “as is appropriate for the performance of those functions”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

SECTION 5—*continued*

6. In page 8, lines 46 to 48 and in page 9, lines 1 to 29 to delete subsections (3), (4) and (5).

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

- *7. In page 9, subsection (4), line 6, to delete “required” and substitute “appropriate”.

SECTION 6

- *8. In page 9, before section 6, but in Part I, to insert the following new section:

“Review of operation of Act. 6.—The Minister shall, not later than 5 years after the commencement of this Act, carry out a review of the operation of this Act.”.

[Acceptance of this amendment involves the deletion of Section 6 of the Bill]

9. In page 9, before section 6, but in Part 2, to insert the following new section:

“Review of operation of Act. 6.—The Minister shall—
(a) carry out a review of this Act, in particular the definition of disability, within a maximum period of 2 years of operation or 3 years of enactment, whichever is the soonest,
(b) for the purpose of assisting him or her in making such a review under this section, consult any such organisations or representatives as he or she considers appropriate,
(c) where a review is carried out under *paragraph (a)* cause a copy of the review to be laid before each House of the Oireachtas and the changes proposed in the review shall not be made until a resolution approving the changes has been passed by each House.”.

—*Senator Sheila Terry.*

[Acceptance of this amendment involves the deletion of section 6 of the Bill.]

SECTION 7

10. In page 10, subsection (1), line 3, to delete “health and education”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

11. In page 10, subsection (1), to delete line 6.

—*Senator Sheila Terry.*

12. In page 10, subsection (1), line 20, to delete “(including a personal social service)” and substitute the following:

“, including a personal social service, such as home care, respite care, personal care and social supports,”.

—*Senator Sheila Terry.*

13. In page 10, between lines 23 and 24, to insert the following definition:

SECTION 7—*continued*

“ ‘needs officer’ shall be construed in accordance with *section 7* and *section 10*. Each subsequent reference to ‘assessment officer’ and ‘liaison officer’ in this Act shall be construed as references to ‘needs officer’;”.

—*Senator Sheila Terry.*

SECTION 8

- 14.** In page 11, subsection (1), lines 13 and 14, to delete “of its employees” and substitute “independent persons”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

- 15.** In page 12, subsection (7)(b)(iii), lines 3 to 8, to delete all words from and including “considered” in line 3 down to and including “provision” in line 8 and substitute “listed in order of importance, which are considered appropriate by the person or persons referred to in *subsection (2)* to meet the needs of the applicant and the period of time required by the person or persons for the provision of each of those services and the order of such provision, giving preference to services which are most needed by the applicant”.

—*Senator Sheila Terry.*

- 16.** In page 12, subsection (7)(b), lines 9 and 10, to delete subparagraph (iv) and substitute the following new subparagraphs:

“(iv) a statement of outstanding needs of the person, which cannot currently be met by the services provided,

(v) a statement of the date by which continuous reviews of the assessment should be carried out, within a period not exceeding 12 months from the date of the previous assessment, or whenever there is a change in circumstances or condition either for the person being assessed or in available resources.”.

—*Senator Sheila Terry.*

- 17.** In page 12, subsection (8)(a), line 11, to delete “may” and substitute “shall”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

SECTION 9

- 18.** In page 13, subsection (4), line 24, to delete “may” and substitute “shall, unless an assessment has been or is being otherwise carried out”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

- 19.** In page 13, subsection (5), lines 31 and 32, to delete “and to be completed without undue delay” and substitute “or, in the case of urgent conditions, to commence immediately, which should be completed without undue delay, within a maximum period of 3 months from commencement”.

—*Senator Sheila Terry.*

SECTION 11

- 20.** In page 14, between lines 22 and 23, to insert the following new subsection:

“(2) A liaison officer shall be independent in the performance of his or her functions.”.

—*Senator Sheila Terry.*

SECTION 11—*continued*

- 21.** In page 15, subsection (7), lines 20 and 21, to delete paragraph (b).
—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*
- 22.** In page 15, subsection (7), lines 27 to 31, to delete paragraph (e).
—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*
- 23.** In page 15, subsection (7), between lines 31 and 32, to insert the following new paragraph:
“(e) the need to ensure, in relation to a service statement (which shall in each case be prepared by a liaison officer based on the assessment of the person concerned), where it is not practicable to provide the required services immediately or alternatively where those services are not affordable in the short term, that a plan be prepared in consultation with the person the subject of the statement for the progressive and incremental delivery of the required services within a time frame specified in the statement.”.
—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*
- *24.** In page 16, subsection (11), lines 4 and 5, to delete “review the provision of services specified in service statements” and substitute “invite the applicant or a person referred to in *section 9(2)* to meet with him or her for the purpose of reviewing the provision of services specified in the applicant’s service statement”.

SECTION 12

- 25.** In page 16, subsection (3), between lines 31 and 32, to insert the following new paragraph:
“(b) The public body shall communicate with the persons in this subsection the information regarding services that may be provided by the public body that it considers that the applicant is entitled to, as soon as practicable after receiving the assessment report, but within a maximum period of 6 weeks after receipt of the assessment report.”.
—*Senator Sheila Terry.*

SECTION 13

- *26.** In page 16, subsection (1), between lines 40 and 41, to insert the following new paragraphs:
“(d) specifying the number of applications for assessments made under *section 9* and the number of assessments completed under that section,

(e) specifying the number of persons to whom services identified in assessment reports have not been provided.”.
- 27.** In page 16, subsection (1), between lines 42 and 43, to insert the following new paragraph:
“(e) identifying the services which are required but which are currently unavailable, resulting in unmet needs of the persons assessed, with a view to making those services available.”.
—*Senator Sheila Terry.*

SECTION 13—*continued*

- *28. In page 17, subsection (3), line 3, after “direct” to insert “and shall be published by the Executive within one month of the date of its submission to the Minister”.

SECTION 14

29. In page 17, subsection (1), between lines 15 and 16, to insert the following new paragraph:

“(b) the contents of the assessment;”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

SECTION 15

- *30. In page 18, subsection (7), line 34, after “to” to insert “in”.
- *31. In page 18, subsection (8)(c), line 49, after “*section 9*” to insert “within the period specified in the recommendation”.
- *32. In page 19, subsection (8)(d), line 4, after “standards” to insert “within the period specified in the recommendation”.
- *33. In page 19, subsection (8)(e), line 8, after “concerned” to insert “within the period specified in the recommendation”.
- *34. In page 19, subsection (8)(f), line 14, after “appropriate” to insert “within the period specified in the recommendation”.

SECTION 16

35. In page 19, subsection (1)(a), lines 20 and 21, to delete “appointed by the Minister” and substitute “an officer of the Ombudsman appointed by the Ombudsman and accountable to him or her”.
- Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

SECTION 18

36. In page 20, subsection (3), line 3, to delete “weeks” and substitute “months”.
- Senator Sheila Terry.*
37. In page 21, subsection (12), line 13, after “appropriate” to insert “and shall, where requested by the applicant,”.
- Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*
38. In page 23, between lines 5 and 6, to insert the following new subsection:

“(24) An appeal shall lie from a decision of the Appeals

SECTION 18—*continued*

Officer to the District Court for the district in which the applicant is ordinarily resident or carries on any trade, profession or business.”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

SECTION 21

*39. In page 24, paragraph (b)(v), line 18, after “review” to insert “with the applicant or a person referred to in *section 9(2)*”.

SECTION 22

40. In page 24, subsection (1), between lines 41 and 42, to insert the following new subparagraph:

“(i) to implement a service statement,”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

SECTION 25

41. In page 26, subsection (3), after line 48, to insert the following new paragraph:

“(c) The compliance of public buildings with Part M shall be ensured by the allocation of certificates of compliance by a building control officer who will also be charged with the periodic monitoring and inspection of such buildings.”.

—*Senator Sheila Terry.*

SECTION 31

42. In page 29, before section 31, to insert the following new section:

“Disability Proofing and Disability Commissioner.

31.—(1) Where the provision of a service would fall within the remit of a Department, or public body under its aegis, without regard to who the service providers might be, the head of the Department or public body under its remit shall ensure that the Department or public body, on an annual basis:

- (a) produces a Disability Proofing Statement (DPS) of its overall remit on the basis that people with disabilities are equally part of the public to be served,
- (b) provides the Disability Proofing Statement to the Disability Commissioner and simultaneously publishes it,
- (c) consults with representatives of the disability movement,
- (d) takes, or causes to be taken, all other appropriate and reasonable steps to identify the extent and range of needs, into the future, of people with disabilities,

SECTION 31—*continued*

- (e) identifies, or causes to be identified, a range of action measures which may also include positive action measures,
 - (f) sets out the steps, along with timelines where appropriate, which it considers are required to ensure the full and equal inclusion of people with disabilities within the remit of the Department or public body. The Disability Proofing Statement will document the areas of unmet service needs for people with disabilities by the Department and will report on the Department's progress in addressing these services on an annual basis,
 - (g) sets out the steps which it has taken, and which it intends to take, to ensure the availability of the necessary resourcing and any other responses that it considers necessary,
 - (h) makes provision that each annual Disability Proofing Statement, other than the first one, provides an analysis of the previous year's statement and any earlier ones, having regard to paragraphs (a) to (g).
- (2) (a) There is established an office to be known as 'The Disability Commissioner', and the holder of the office shall be known as 'The Disability Commissioner', and is referred to in this Act as 'The Commissioner',
- (b) The Commissioner shall be independent in the performance of his or her functions,
- (c) The appointment of a person to be the Commissioner shall be made by the President on the advice of the Government following a resolution passed by Dáil Éireann and by Seanad Éireann recommending the appointment of that person.
- (3) The function of the Commissioner shall be:
- (a) to monitor compliance by Departments and public bodies under their remit with the provisions of *subsection (1)*,
 - (b) to take all necessary measures within his or her authority to ensure compliance by Departments and public bodies of *subsection (1)*,

SECTION 31—*continued*

- (c) to carry out investigations, whether on his or her own initiative, on request from the Minister, or pursuant to a complaint made to him or her by any person, into any failure by a Department or a public body to comply with the provisions of *subsection (1)* that he or she or, as appropriate, the Minister, consider may have occurred,
 - (d) to provide, as he or she considers appropriate, advice or other assistance to the public regarding their rights under *subsection (1)*,
 - (e) to provide, as he or she considers appropriate, advice or other assistance to Departments and public bodies regarding their obligations under this *subsection (1)*,
 - (f) to prepare and publish commentaries on the practical application and operation of the provisions, or any particular provisions, of *subsection (1)*, including commentaries based on the experience of holders of the office of Commissioner in relation to investigations and findings following investigations, of such holders under this Act.
- (4) (a) (i) The Commissioner shall, not later than 6 months after the end of each year prepare and furnish to the Minister a report on his or her activities in that year.
- (ii) The Minister shall, not later than 2 months after the receipt of the report, cause a copy thereof to be laid before each House of the Oireachtas.
 - (iii) The Commissioner may, if he or she considers it appropriate to do so in the public interest or in the interests of any person, prepare and publish a report in relation to any investigation carried out or other function performed by him or her under *subsection (1)* or any matter relating to or arising in the course of such an investigation or performance.
- (b) (i) In any case where a complaint is made to the Commissioner and the Commissioner decides not to carry out an investigation

under this Section or decides to discontinue such an investigation, he or she shall send to the person who made the complaint and to the public body concerned a statement in writing of his or her reasons for the decision and shall send to such other person as he or she considers appropriate such statement in writing in relation to the matter as he or she considers appropriate.

- (ii) In any case where the Commissioner conducts an investigation under *subsection (1)*, he or she shall prepare and submit to:
 - (I) the public body concerned,
 - (II) the Minister, and the Minister of the Department concerned, and,
 - (III) in a case where a complaint is made to the Commissioner, the complainant,

a report in writing of the findings of the investigation and may include in the report any recommendations he or she considers appropriate having regard to the investigation.

- (iii) The Commissioner may issue an interim report if he or she considers it appropriate so to do.
- (iv) The Commissioner may request a public body to submit to him or her within a specified time any comments it may have regarding any findings or recommendations contained in a report made by him or her.
- (v) If, within a reasonable time after a report containing recommendations is submitted to a public body, any recommendations contained in the report have not, in the opinion of the Commissioner, been implemented by that body, the Commissioner may, after considering any responses made to him or her by the public body in respect of those recommendations, make a report thereon to each House of the Oireachtas.

SECTION 31—*continued*

(vi) The Commissioner shall attach to every report under this section a copy of every response (if any) made by or on behalf of a public body to the said recommendations.

(5) (a) For the purpose of his or her functions under this Act the Commissioner may require any person who, in the opinion of the Commissioner, is in possession of information, or has a record or thing in his or her power to control, that is relevant to the purposes aforesaid to furnish to the Commissioner any such information, record or thing and, where appropriate, may require the person to attend before him or her for that purpose, and the person shall comply with the requirement.

(a) No enactment or rule of law prohibiting or restricting the disclosure or communication of information shall preclude a person from furnishing to the Commissioner any such information or record, as aforesaid.”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy, Sheila Terry.*

43. In page 29, to delete lines 40 to 43 and in page 30, to delete lines 1 to 5 and substitute the following new subsection:

“31. (1) Each Minister of the Government,”.

—*Senators Joanna Tuffy, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

***44.** In page 30, subsection (4), between lines 36 and 37, to insert the following new paragraph:

“(d) a statement of the intervals at which reports shall be prepared relating to the progress made in the implementation of the plan, being intervals of not more than 3 years from the date of the publication of the plan under this section,”.

***45.** In page 31, between lines 5 and 6, to insert the following new subsection:

“(7) When a report is prepared by a Minister of the Government under this section, it shall be laid before Dáil Éireann as soon as may be.”.

SECTION 32

46. In page 31, subsection (1), between lines 13 and 14, to insert the following new paragraphs:

“(d) the introduction of National Standards for Disability Services and the statutory inspection of such services,

SECTION 32—*continued*

(e) the consideration of the primary care needs of people with disabilities when developing the new model of primary care.”.

—*Senator Sheila Terry.*

SECTION 35

*47. In page 32, subsection (1)(a), line 25, to delete “taken, and” and substitute “taken,”.

*48. In page 32, subsection (1)(b), line 31, to delete “taken.” and substitute “taken, and”.

*49. In page 32, subsection (1), between lines 31 and 32, to insert the following new paragraph:

“(c) any other matter which the Minister considers appropriate.”.

SECTION 47

50. In page 40, between lines 46 and 47, to insert the following new subsection:

“(5) The Minister shall, as soon as may be after the passing of this Act, prepare and lay before each House of the Oireachtas, a report on the possibility of increasing the public service employment quota for people with disabilities above 3 per cent.”.

—*Senator Sheila Terry.*

SECTION 48

*51. In page 41, subsection (2), line 19, to delete “compliance,” and substitute “compliance”.

SECTION 53

*52. In page 48, line 34, after “impairment” to insert “persons who are blind or partially sighted”.

*53. In page 48, line 37, to delete “teletext services, and” and substitute “teletext services,”.

*54. In page 48, line 38, to delete “subtitling,” and substitute “subtitling, and”.

*55. In page 48, between lines 38 and 39 to insert the following:

“(IV) audio description,”.

SECTION 57

*56. In page 50, between lines 19 and 20, to insert the following new subsection:

“(2) (a) Nothing in this Act, shall be taken to contravene, or constitute any alteration, to the rights and protections prescribed in the Equal Status Acts 2000 to 2004.

(b) Nothing in this Act, shall be taken to contravene, or constitute any alteration, to the rights and protections prescribed in the European Convention of Human Rights Act 2003.

SECTION 57—*continued*

(c) Nothing in this Act, shall be taken to contravene, or constitute any alteration, to the rights and protections prescribed in the Employment Equality Acts 2000 to 2004.”.

—*Senator Sheila Terry.*

LONG TITLE

57. In page 5, lines 7 to 12, to delete all words from and including “OCCASIONED” in line 7 down to and including “-CATION,” in line 12 and substitute the following:

“OF PERSONS WITH DISABILITIES, TO ENABLE MINISTERS OF THE GOVERNMENT TO MAKE PROVISION”.

—*Senator Sheila Terry.*