

[The page and line references of these amendments are to the text of the Bill as passed by Dáil Éireann unless otherwise stated.]

## SEANAD ÉIREANN

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### AN BILLE UM MÍCHUMAS 2004 — AN TUARASCÁIL DISABILITY BILL 2004 — REPORT

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*Leasuithe  
Amendments*

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*\*Government Amendments are distinguished by an asterisk.*

1. 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”.  
— *Senators Sheila Terry, Brian Hayes.*
2. In page 6, line 17, after “impairment” to insert “, a person who has a physical or mental impairment which has a substantial and long term adverse effect on his ability to carry out normal day-to-day activities”.  
— *Senators David Norris, Mary Henry.*
3. In page 7, between lines 9 and 10, to insert the following:  
  
“(i) any private body which provides services and products to the public;”.  
— *Senators Sheila Terry, Brian Hayes.*
4. In page 7, between lines 9 and 10, to insert the following:  
  
“(i) any body which is publicly appointed, which is funded by public money or which carries out public functions designated by law;”.  
— *Senators Sheila Terry, Brian Hayes.*
- \*5. In page 8, lines 36 to 39, to delete “an officer of which is the accounting officer in relation to the appropriation accounts of that body for the purposes of the Comptroller and Auditor General Acts 1866 to 1998” and substitute “which is not the subject of an allocation by a Minister under *subsection (2)*”.
6. In page 9, to delete the text inserted by Government amendment No. 8 at Committee and substitute the following:

“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,

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(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.”.

— *Senators Sheila Terry, Brian Hayes.*

\*7. In page 10, to delete lines 24 and 25.

8. In page 12, 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”.

— *Senators Sheila Terry, Brian Hayes.*

9. In page 12, to delete lines 9 and 10 and substitute the following:

“(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.”.

— *Senators Sheila Terry, Brian Hayes.*

\*10. In page 12, line 18, to delete “requirement” and substitute “request”.

\*11. In page 12, line 20, to delete “requirement” and substitute “request”.

\*12. In page 13, line 27, to delete “him or her” and substitute “the person”.

13. In page 15, between lines 31 and 32, to insert the following:

“(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.*

\*14. In page 16, in line 5 of the text inserted by Government amendment No. 26 at Committee, after “provided” to insert “including the ages and the categories of disabilities of such persons,”.

15. In page 16, between lines 42 and 43, to insert the following:

“(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.”. — *Senators Sheila Terry, Brian Hayes.*

16. In page 17, between lines 15 and 16, to insert the following:

“(b) the contents of the assessment;”.  
— *Senators Joanna Tuffey, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

\*17. In page 19, line 40, to delete “pursuant to *section 15*”.

\*18. In page 19, line 41, to delete “under that section”.

\*19. In page 20, lines 14 and 15, to delete “, or the opinion of the Executive or the head of the education service provider concerned”.

20. In page 23, between lines 5 and 6, to insert the following:

“(24) An appeal shall lie from a decision of the Appeals 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 Tuffey, Brendan Ryan, Kathleen O’Meara, Derek McDowell, Michael McCarthy.*

\*21. In page 24, line 36, to delete “designated” and substitute “assigned”.

22. In page 26, after line 48, to insert the following:

“(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.”.  
— *Senators Sheila Terry, Brian Hayes.*

23. In page 29, between lines 39 and 40, to insert the following:

“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,
  - (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)*,
  
  - (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.

(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.

(b) 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.*

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

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

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

**\*25.** In page 31, line 2, to delete “Dáil Éireann” and substitute “each House of the Oireachtas”.

**\*26.** In page 31, line 5, to delete “Dáil Éireann” and substitute “each House of the Oireachtas”.

**\*27.** In page 31, in lines 2 and 3 of the text inserted by Government Amendment No. 45 at Committee, to delete “Dáil Éireann” and substitute “each House of the Oireachtas”.

— *Senators Feargal Quinn, Mary Henry.*

**28.** In page 40, between lines 46 and 47, to insert the following:

“(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.”

— *Senators Sheila Terry, Brian Hayes.*

**\*29.** In page 49, line 15, after “person” to insert “as well as the body corporate”.