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**AN BILLE MEABHAIR-SHLÁINTE (FRITH-IDIRDHEALÚ),  
2013  
MENTAL HEALTH (ANTI-DISCRIMINATION) BILL 2013**

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**EXPLANATORY MEMORANDUM**

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*Purpose of Bill*

The purpose of the Mental Health (Anti-Discrimination) Bill is to contribute to the elimination of discrimination against people who have been diagnosed with a mental health condition, by addressing existing legal provisions on the statute book.

*Main provisions*

To remove, replace or amend provisions contained in legislation related to membership of Dáil Éireann; eligibility for jury service; disqualification of company directors; National Lottery games discretion, where these provisions are based on the current or past mental health status of the individual concerned.

The Bill seeks to make it a criminal offence to refuse people insurance or credit-lending facilities on the basis of a history of a mental health condition; and to ensure that people with mental health conditions are not discriminated against in legal proceedings, where their medical record has no relevance to the charge.

*Sections 1 and 2*

These sections contain general provisions such as the short title of the Bill and the date of commencement, a standard interpretation section which provides for the definition of various terms used throughout the Act and outlines the parameters of any references used in the Act.

*Section 3*

*Section 3* removes a discriminatory measure affecting Members of Dáil Éireann who under the Electoral Act 1992 are no longer eligible to be members should they be found to be of “unsound mind”. Subsection 1 provides that “lack of decision-making ability”, as defined by the Assisted Decision-Making (Capacity) Bill will replace the concept of “unsound mind”. Subsection 2 outlines how if a person’s lack of decision-making ability is found to be permanent and they can no longer perform their functions as a legislator it will be possible for disqualification of Dáil Éireann to come into effect. This removes the vague and undefined phrase of “unsound mind” from the Electoral Act 1992 and brings it into line with both the forthcoming Assisted Decision-Making (Capacity) Bill and the UN Convention on the Rights of Persons with Disabilities which Ireland signed in 2007. It will also mean TDs will no longer be at risk of disqualification from holding their seats on the sole basis of being diagnosed with a mental health condition.

#### *Section 4*

*Section 4* removes the discriminatory measure affecting people who have been diagnosed and treated by a medical practitioner for a mental health condition. Currently the Juries Act 1976 prohibits people in such a situation from participating in jury service.

It is proposed that the remaining provision under 'Incapable persons' that deals with people who have insufficient capacity will adequately provide for situations where an individual lacks decision-making ability due to a mental health condition.

#### *Section 5*

*Section 5* removes the undefined and vague phrase "of unsound mind" in the Companies Act 1963 and replaces it with the phrase "lacks decision-making ability", to be defined in the forthcoming Assisted Decision-Making (Capacity) Bill. This will bring Irish legislation in line with the UN Convention on the Rights of Persons with Disabilities, which Ireland signed in 2007.

#### *Section 6*

*Section 6* removes the potentially discriminatory provision in section 28(2)(b) of the National Lottery Act 1986, which allows the rules of a lottery game to make provision for the giving of prizes in cases where the holders of the winning tickets are persons under any other legal disability or of unsound mind. This section proposes to remove the reference to "or of unsound mind" which has potentially discriminatory implications.

#### *Section 7*

*Section 7* is introduced in order to ensure that no legislation is interpreted by the Courts in a way that could impair the rights of any person solely on the basis that the person is experiencing or has in the past experienced a mental health condition.

#### *Section 8*

*Section 8* makes it a criminal offence to refuse someone insurance on the basis of having a history of a mental health condition. The Equal Status Acts 2000-2011 allow anyone being discriminated against in such circumstances to seek legal recompense. The proposed section gives Gardaí the power to request a warrant to search the premises of the insurer where they are satisfied that a warrant is necessary to obtain evidence relating to discrimination on such grounds. It sets out how the Gardaí can obtain such a warrant, the terms of this warrant, and the repercussions for individuals who obstruct Gardaí taking action under this provision, or fail to comply with any instruction on foot of this provision. The powers of arrest accorded to Gardaí are outlined. It details how if a person representing a company is found liable of an offence under this provision, then the company itself shall be deemed liable also.

#### *Section 9*

*Section 9* provides that if an insurer is found to have discriminated against someone on the grounds of their mental health history then the insurer shall have no recourse to enforce any of the terms or conditions that apply to the policy taken out. However, should an insurer be prosecuted on the basis of discrimination of this nature, the contract of insurance will stand to the benefit of the individual.

#### *Section 10*

*Section 10* makes it a criminal offence to refuse someone credit on the basis of a history of a mental health condition. The Equal Status Acts 2000-2011 allow anyone being discriminated against in such circumstances to seek legal recompense. This provision sets out how

a creditor will be fined and/or imprisoned should they refuse credit on the basis of a mental health condition. It gives Gardaí the power to request a warrant to search the premises of the creditor where they are satisfied that a warrant is necessary to obtain evidence relating to discrimination on such grounds. It sets out how the Gardaí can obtain such a warrant, the terms of this warrant, and the repercussions for individuals who obstruct Gardaí taking action under this provision, or fails to comply with any instruction on foot of this provision. The powers of arrest accorded to Gardaí are outlined. It details how if a person representing a company is found liable of an offence under this provision, then the company itself shall be deemed liable also.

*Deputy Simon Harris,  
Meitheamh, 2013.*