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information for all

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Citizens Information Bill

The Minister for Social and Family Affairs, Mr. Seamus Brennan T.D., proposes to amend the functions of Comhairle, via a Citizens Information Bill (instead of the Comhairle (Amendment) Bill 2004), so as to confer enhanced and additional functions on it involving, among other things, the introduction of a personal advocacy service specifically aimed at people with disabilities. The Citizens Information Bill, in conjunction with the Disability Act, 2005 and the Education for Persons with Special Educational Needs Act, 2004 is part of the Government's legislative programme for improving services for people with disabilities. All three 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. It is the intention that the Bill will be enacted during 2006.

Comhairle was established under the Comhairle Act 2000 and comes under the aegis of the Department of Social and Family Affairs. Its core function is to support the provision of and, where appropriate provide directly to the public, independent information, advice and advocacy services so as to ensure that individuals have access to accurate, comprehensive and clear information relating to social services and are referred to the relevant services. It has a statutory commitment to assist and support people, particularly those with disabilities, in identifying and understanding their needs and options and in accessing their entitlements to social and civil services.

The demand for Comhairle and Citizen Information Service (CIS) services is substantial. In 2005, there were 2.5 million individual users of the OASIS website, 88,000 callers to the Citizen Information Phone Services and 734,000 queries made to the Citizen Information Centres. In addition Comhairle has also undertaken a programme of support for community and voluntary sector advocacy in relation to people with disability and will be funding in the region of thirty projects by the end of 2006



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Sectoral Plans for Disability Services

The Disability Act 2005 requires that six government departments publish sectoral plans for disability services by July 2006. The various plans are available on the website of the relevant departments – links to all can be found on the website of the Department of the Taoiseach. www.taoiseach.gov.ie

In general, they are long documents setting out the services already available and existing commitments to service development. As required by the Act, each plan takes into account the plans of other departments so there is an element of overlap between the various plans. All departments are, of course, required to take action to ensure access to buildings and services and to meet the quota for public service employment. The plans all include monitoring arrangements. Here we set out a brief description of the specific new commitments contained in the plans.

Department of Health and Children

The Sectoral Plan of the Department of Health and Children sets out the actions which are intended will be taken by the Department itself, the Health Service Executive (HSE) and 27 other statutory bodies to meet their obligations under the Disability Act 2005.

Assessment of need and statement of services to be provided

The provisions of the Disability Act dealing with assessment of need and statement of services will start from 1 June 2007 for children under the age of 5. They will be implemented for those aged between 5 and 18 in tandem with the implementation of the Education for Persons with Special Educational Needs Act 2004. (A plan for its implementation is being drawn up by the National Council for Special Education and this must be completed by October 2006). They will be extended to adults as soon as possible but not later than the end of 2011.

Over the next year, the HSE will put assessments officers, liaison officers and complaints officers in place. Regulations governing assessments and standards will be drawn up by the Department in conjunction with the interim Health Information and Quality Authority. The Department will also appoint an Appeals Officer and set up a National Disability Advisory Committee.

Housing

Protocols will be agreed between the HSE and local authorities to govern liaison concerning the housing needs of people with disabilities.

Income supports

A protocol has been agreed with the Department of Social and Family Affairs (DSFA) to ensure that income supports and associated benefits do not create financial barriers to people with disabilities taking up employment.

It has already been agreed that the income maintenance payments made by the HSE will be transferred to the Department of Social and Family Affairs. The Sectoral Plan states that some of the benefits for people with disabilities will be “rationalised” but it is not clear what exactly this means.

Employment services

It is intended to transfer funding for the employment services currently provided by the HSE from the health sector to the Department of Enterprise, Trade and Employment/FÁS over the next three to five years. These include sheltered enterprise and sheltered employment services for people with intellectual disabilities and mental health difficulties.

Complaints and appeals

The Disability Act 2005 provides for a complaints and appeals procedure in the assessment of need and service statement process. The Health Act 2004 which set up the HSE also has provisions for a complaints procedure for health services generally. It is proposed to have the same complaints procedure for all. Over the next year, the HSE will put in place the administrative structures necessary for complaints procedures. The Department of Health and Children will appoint an Appeals Officer to deal with appeals under the Disability Act (this does not apply to health services generally).

http://www.dohc.ie/publications/fulltext/disability_sectoral_plan

Department of Social and Family Affairs

The overall aim of the DSFA's Sectoral Plan is to seek to deliver support to people with disabilities which will reduce their risk of dependence. This means that they should be able to meet their income needs to a far greater extent from employment and they should have opportunities for further education and developing life skills.

One of the Department's major objectives is to ensure that income supports and associated secondary benefits do not create financial barriers to seeking, accepting or improving employment. The Department intends to conduct a study on the impact of the payment of Disability Allowance from the age of 16 years on education and employment incentives for young people, and make changes to the age of qualification if appropriate.

This Sectoral Plan also refers to the transfer of income maintenance payments from the HSE – specifically, in the context of disability, the Domiciliary Care Allowance, Blind Welfare Allowance and Mobility Allowance. It states that these currently non-statutory schemes will be put on a statutory basis and the transfer will allow for “opportunities for scheme rationalisation and integration”.

The full Disability Allowance is to be available to everyone in long-term care by 2007.

It is proposed to introduce a Citizens Information Bill instead of the Comhairle (Amendment) Bill 2004 – see above.

<http://www.welfare.ie/publications/sectoralplan/index.html>

Department of Enterprise, Trade and Employment

The Department proposes to develop a comprehensive employment strategy for people with disabilities by:

- Enhancing the relevance and effectiveness of vocational training
- Developing necessary supports to allow greater access to open labour market employment for people with disabilities
- Increasing the participation rates of people with disabilities on Community Employment Schemes – for people with disabilities under 55 the participation limit will be raised by one year from three to four years and for those over 55 it will be increased from six to seven years. This will be implemented progressively over three years.

The Department will establish a Consultative Forum on the Employment Strategy. It will include representatives of people with disabilities, service providers, relevant government departments, social partners and agencies. The Forum will address issues such as the interaction between welfare, vocational training and educational programmes that aim to provide incentives to people with disabilities to take up work or other training options.

The Department has agreed a protocol with the Department of Social and Family Affairs and the Department of Health and Children for appropriate co-operation in relation to the development and co-ordination of services for persons with disabilities. <http://www.entemp.ie/labour/strategy/sectoralplan.htm>

Department of Transport

The Sectoral Plan of the Department of Transport gives details of the plans to ensure accessible public transport. This is defined as:

- Full unassisted access for wheelchair users (and for prams and buggies) including, where appropriate, accessible toilets and lifts
- Features to aid people with difficulties in walking, gripping, reaching or balancing, including slip-resistant surfaces, handrails and handholds
- Facilities to aid people with vision impairments, deafness or hearing loss, and other impairments. These include the consistent use of colour contrasts, clear signing and lighting, non-reflective surfaces, audio and visual announcements, tactile and audible guidance surfaces, warning systems and induction loops
- Facilities to aid people with learning disabilities or mental health problems. These include clear oral and written information and consistent staff training in recognising and understanding the needs of people

Bus and rail services

It is expected that all public city buses will be accessible by 2012. Practically all inter-urban passenger rail services will be provided with accessible carriages by 2009.

Travel Assistance Scheme

Bus Átha Cliath is to launch the Travel Assistance Scheme for People with Mobility, Sensory and Cognitive Impairments as a pilot project in 2006. The scheme will involve travel assistants providing advice on journey planning and accompanying passengers the first few times they use public transport. <http://www.transport.ie/viewitem.asp?id=7760&lang=ENG&loc=845>

Department of the Environment, Heritage and Local Government

It is proposed to develop a new housing strategy for people with disabilities. New protocols will be established for inter-agency co-operation for all special housing needs. Legislation will be introduced that will result in a new means of assessing housing

need to ensure that all people can live with maximum independence within their community. Schemes of letting priorities will be reviewed.

It is intended to propose changes to Part M of the Building Regulations later in 2006. A Disability Access Certificate system at the design stage of new commercial buildings and apartment blocks will be introduced.

The Disabled Persons Grant Scheme will be reformed to improve equity and targeting.

Each local authority will carry out an accessibility audit of all roads and streets, pavements and pedestrian crossings, public buildings, public parks, amenities and open spaces, heritage sites, public libraries and harbours and identify the remedial action necessary to make them accessible.

[http://www.viron.ie/doi/doihome.nsf/wvhtml/environment_sectoral_plan.htm](http://www.environ.ie/doi/doihome.nsf/wvhtml/environment_sectoral_plan.htm)

Department of Communications, Marine and Natural Resources

It is expected that the development of digital television will offer more services tailored for people with disabilities.

Access for people with disabilities to the new Emergency Call Answering Service will be prioritised.

The Fisheries Boards will prioritise access for disabled anglers.

An accessibility audit of all fishery harbour centres will be carried out within the next 12 months.

<http://www.dcmnr.gov.ie/Corporate+Units/Sectorial+Plan+2000-2009/>

Code of Practice on Accessible Public Services

The Disability Act 2005 provides that all public bodies must ensure that access to services is integrated and must provide help to people accessing services.

Services and goods supplied to all public bodies are required to be accessible and communications and information provided by public bodies must be accessible. The National Disability Authority has drawn up a Code of Practice on Accessible Public Services which gives advice on how to meet the requirements of the Act.

www.nda.ie

Criminal Justice Act 2006

The Criminal Justice Act 2006 started out as a Bill in 2004 and has been changed significantly as it progressed through the Oireachtas. It is a lengthy complex Act which deals with a range of criminal law issues and amends various other pieces of legislation. Parts of it came into effect on 1 August 2006, other parts will be brought into effect later this year and there is no date yet for the implementation of some parts. Here we briefly describe the main elements of the Act. The implementation date is 1 August 2006 unless stated otherwise.

Investigation of offences

The Act has a number of provisions dealing with the investigation of offences. These include a statutory power to preserve the scene of a crime and general rules on the issue of search warrants where an arrestable offence has been committed or suspected.

Extension of period of detention

At present, if you are suspected of having committed a crime, you may be detained for up to 12 hours for questioning before being charged. This arises under the Criminal Justice Act 1984. This period is being increased to 24 hours but no date has been set for the implementation of this provision. (The detention of suspects for up to 48 hours under the Offences against the State Act is not affected.)

DNA testing

The taking of samples for DNA testing is provided for in the Criminal Justice (Forensic Evidence) Act 1990. This Act provides that mouth swabs and hair samples will no longer be considered as "intimate samples" – this means that a person's consent will not be required for taking them. New legislation on the establishment of a DNA database is being prepared but this is not dealt with in this Act.

Admissibility of witness statements

The rules on what may be admitted in evidence in a criminal trial are complex. The Act provides for the admissibility of statements which were made by witnesses and which the witness subsequently refuses to stand over. The court now has the power to decide

whether or not to admit such a statement and the Act sets out guidelines for the court in making the decision.

Appeals in criminal cases

The prosecution has limited rights to appeal in criminal cases. In general, it is not possible for the prosecution to appeal against an acquittal. This Act provides that the prosecution may appeal against an acquittal but on a point of law only – this means that the person acquitted remains acquitted even if the prosecution wins the point of law.

Firearms offences

The Act provides for increased penalties for offences under the Firearms Acts 1925 to 2000. It introduces mandatory minimum sentences for certain firearms offences. These include such offences as possession of a firearm with intent to endanger life, possession of a firearm while hijacking a vehicle, use of a firearm to aid escape, possession of a firearm in suspicious circumstances, possession of a firearm with criminal intent and converting a shotgun into a sawn-off shotgun. These provisions will come into effect on 1 November 2006.

Gun amnesty

There will be a “gun amnesty” during September and October 2006. This means that firearms may be surrendered to the Gardaí before the new penalties and mandatory minimum sentences are introduced. The amnesty will only apply to the illegal possession of the gun. During the amnesty period, people who surrender weapons will not be prosecuted for the simple illegal possession of the weapon. However, if it is established that the weapon was used in a criminal activity, that evidence may be used in any prosecution. This amnesty will also apply to flick knives and other offensive weapons.

Gun licences

The Act also deals with the conditions for the granting of firearms certificates (gun licences) and the registration of firearms dealers. Applicants for a firearms certificate will have to satisfy the Gardaí that they have a secure place to hold the gun. Certain firearms are to be regarded as “restricted firearms” depending on certain features such as calibre, action type and muzzle energy. Anyone who wants a licence for a restricted firearm will have to apply directly to the Garda Commissioner.

The Act also provides for the authorisation of rifle or pistol clubs and firing ranges, a statutory right of appeal to the District Court of decisions regarding

firearms certificates and the introduction of a new type of certificate that will allow young people to be trained in the use of firearms for sports purposes. Some of these provisions will come into effect on 1 November 2006 and no date has been set for others.

Explosives

The law on explosives is currently in the Explosives Act 1875. The Act provides for amendments to that Act to introduce offences in respect of the misuse of fireworks in a public place and the possession of illegally imported fireworks with intent to supply. It also provides for increased penalties for, among other things, illegal importation, sale and use of fireworks.

Organised crime

The Act provides for a range of new offences relating to participation in or assisting in the carrying out of criminal activities by organised gangs. These provisions will enable Ireland to give effect to commitments arising from the UN Convention on Organised Crime and to EU joint actions.

Misuse of drugs

The Act creates two new offences in relation to illegal drugs:

- importing drugs in excess of a certain value and
- supplying drugs to a prison

At present, there is a mandatory minimum sentence of 10 years for the possession of drugs above a certain value (€13,000) for sale or supply. This same mandatory sentence will apply to the new crime of importing drugs above a certain value. The mandatory sentence is to be applied in all but “specific and exceptional” circumstances – the Act aims to further ensure that the mandatory sentence should be the normal one and that the exceptions should be limited.

Drug offenders “register”

Drug offenders will be required to provide information about where they live and where they go. This provision is broadly similar to that which applies to certain sex offenders. These requirements are generally regarded as being “on the sex offenders register” even though there is no register. Similarly there will be no drug offenders register but the requirements are likely to be described as being on the drug offenders register.

People who are convicted on indictment of drug trafficking offences and who get a sentence of a year or more will have to notify the Gardaí of their

whereabouts and their movements. This will apply for periods of a year to 12 years depending on the severity of the sentence. People aged under 18 when sentenced will generally come under these provisions for half of the time which applies to adults. The notification provisions will come into effect on 2 October 2006.

Non-custodial sentences

The Act puts the power to suspend all or part of a sentence on a statutory basis. The court, when suspending a sentence, may attach conditions requiring the person to be of good behaviour and to keep the peace. Breaching these conditions means that the person may have to serve the sentence.

The court may impose a fine and a custodial sentence and then defer the sentence. This may be subject to various conditions such as taking part in rehabilitation.

The court will be able to impose "restriction on movement" orders. This may be imposed if a person is convicted of certain offences (mainly public order and assault offences) and is sentenced to imprisonment of three months or more. The Act provides that compliance with such orders may be electronically monitored but there are no immediate plans to introduce such monitoring. These will come into effect on 2 October 2006.

ASBOs

The Act provides for anti-social behaviour orders (ASBOs) for both adults and people aged under 18. ASBOs for young people are described in the April 2006 issue of Relate.

Anti-social behaviour is defined in the same way for young people and adults. The process starts with a Garda warning to a person to desist from the anti-social behaviour. If this is not successful, the Gardaí may apply to the District Court for an ASBO. This is a civil law procedure but it may be a criminal offence

to breach it. No date has been set for the implementation of these provisions.

Reckless endangerment of children

The Act provides for a new offence of reckless endangerment of children. This was recommended by the Ferns Report into clerical child sex abuse. It provides that where a person in authority, intentionally or recklessly, fails to take steps to protect a child from harm or abuse, that person is guilty of an offence. The maximum penalty is 10 years imprisonment. In effect, people in authority have a positive duty to intervene if they know that a child is being abused.

Fixed charge offences

The Act provides for fixed charges for two public order offences under the Criminal Justice (Public Order) Act 1994 – disorderly conduct in a public place and being intoxicated in a public place. These are similar to fixed charges for parking and speeding offences. If the fixed charge is paid, there are no further court proceedings.

Attacks on emergency service personnel

The Act creates new offences of assaulting or impeding people such as fire fighters and ambulance crews engaged in providing emergency services and those working in the accident and emergency departments of hospitals.

Amendments to Children Act 2001

The amendments to the Children Act which are included in the Criminal Justice Act 2006 were described in the April 2006 issue of Relate. No date has been set for their implementation except that the provisions in relation to the age of criminal responsibility will come into effect on 16 October 2006. This means that, from that date, children under 12 may not be charged with most criminal offences but they may be charged with the offences of murder, manslaughter, rape or aggravated sexual assault.

Legislation Update

Child Care (Amendment) Bill 2006

The Child Care (Amendment) Bill 2006 has been published but has not yet been discussed by the Oireachtas. It deals with the rights of long-term foster parents of children who are in the care of the Health Service Executive (HSE). At present, foster parents do not have the right to make various parental decisions in respect of their foster children. This right remains with the HSE.

The Bill deals with children who are legally in the care of the HSE, whether voluntarily or as a result of a court order, and are then placed with foster parents or relatives. It provides that the foster parents or relatives who have been caring for the child for a continuous period of at least five years may apply to the court for an order. As in all child care proceedings, the order will be granted only if it is the best interests of the child. The consent of the HSE is also required and the consent of the parents or guardians may be required.

The order may, subject to conditions, give the foster parents broadly the same rights as parents have to make decisions about their children. In particular, foster parents will be able to give consent for medical and psychiatric examinations, treatment and assessments and sign the forms for the issue of a passport. The court may attach any conditions which it thinks appropriate.

Civil Law (Miscellaneous Provisions) Bill 2006

The Civil Law (Miscellaneous Provisions) Bill 2006 has been published but has not yet been discussed in the Oireachtas. The Bill covers a number of issues including, for example, the pension entitlements of judges and the composition of the committees which draw up the rules of the different courts. The following is a very brief description of those proposals which more directly affect the public.

Legal Services Ombudsman

The Bill provides for the setting up of a Legal Services Ombudsman whose main functions will be to:

- Investigate complaints
- Review the procedures of the professional bodies for barristers and solicitors – the Bar Council and the Law Society – for dealing with complaints made to them
- Assess the adequacy of the admissions policies of the legal professions

You will be expected to make your initial complaint to the Bar Council or the Law Society as appropriate. If you are not satisfied with the manner with which it was handled by these bodies, you may complain to the Legal Services Ombudsman. This can include the failure to investigate your complaint or undue delay in dealing with it. You may also complain to the Legal Services Ombudsman about a decision of the Law Society to make or refuse a grant from the Society's compensation fund. When the Legal Services Ombudsman is appointed, the Law Society's Independent Adjudicator service will end.

Complaints about solicitors

At present complaints against solicitors are heard by a committee of the Council of the Law Society. The committee may include people who are not solicitors but two-thirds must be members of the Council. The Bill proposes to remove this requirement and provide that a majority of the committee must be non-solicitors but the chair must be a solicitor.

The Bill also provides that the Law Society may direct a solicitor to pay a client up to €3,000 as compensation for loss suffered because of inadequate service.

Fees for court services

The Bill provides for the making of orders in respect of the fees to be charged for various services provided by the courts. Such orders may provide that a percentage of the annual income of a ward of court may be charged for the management of the ward's property and income by the wards of court office.

Video links

The Bill provides for the giving of evidence by live video link in civil proceedings. There are already arrangements in place for giving video evidence in criminal cases.

Draft Medical Practitioners Bill

The draft heads of the Medical Practitioners Bill have been published in order to allow public consultation on its provisions. The Bill proposes to replace the Medical Practitioners Acts 1978 to 2002 and is concerned with the regulation of doctors.

Doctors are regulated at present by the Medical Council. The majority of its members are elected or nominated by doctors. The draft Bill proposes to change this. The Bill would provide that the Medical Council's main role will be the protection of the public interest. It is proposed that the 25 member Council would be composed of seven members elected by doctors, five representatives of medical schools, seven members of the public, four nominees of professional and other bodies and two nominees of the Minister for Health. The Fitness to Practise Committee would have a lay majority; the Health Committee would have a majority of medical practitioners.

The draft Bill deals with, among other things, the setting and monitoring of professional standards, the keeping of a register of doctors and the investigation of complaints against doctors.

<http://www.dohc.ie/medpractbill>

Planning and Development (Strategic Infrastructure) Bill 2006

The Planning and Development (Strategic Infrastructure) Bill 2006 aims to change the Planning Acts to allow for certain planning decisions to be made by a division of An Bord Pleanála in relation to infrastructure and the major electricity transmission lines. It also provides for a range of other amendments to the Planning Acts.

Applicants for activities involving strategic infrastructure will be able to apply to An Bord Pleanála for planning decisions and will not need to go through the local authority procedure.

The precise definition of the developments covered by the proposed new procedures is very technical but the following are the main categories involved:

- Energy infrastructure including installations concerned with the production, storage and transmission of oil, gas and electricity
- Transport infrastructure including various terminals for land and sea transport, railways, airports and harbours
- Environmental infrastructure including waste disposal facilities and waste treatment plants, dams and coastal treatment works

In order to come under the new procedures, An Bord Pleanála must certify that

- The development would be of strategic economic or social importance

- The development would contribute significantly to the fulfilment of any of the objectives in the National Spatial Strategy or in any regional planning guidelines
- The development would have a significant effect on the area of more than one planning authority

Generally, applications for such developments must be accompanied by an environmental impact assessment. The relevant local authorities would be consulted about the proposed developments.

Local Government (Business Improvement Districts) Bill 2006

The Local Government (Business Improvement Districts) Bill 2006 provides for the establishment of business improvement district schemes (BIDS). A BID scheme is an organisational and financing mechanism with legal backing through which businesses can develop and implement initiatives in defined areas to improve those areas for the betterment of the trading environment. This means that, in a BID scheme, a group of businesses come together and decide that they want improved services, a wider range of services, or new facilities or activities in the area in which they operate and that they are willing to pay for it. A BID company is established with responsibility for implementing the provisions of the BID scheme and the local authority levies and collects the annual BID contributions from businesses on behalf of the scheme.

New website for Citizens Information

Comhairle is currently developing a new website for Citizens Information which will replace Oasis, and the Citizens Information Database. The site will be launched in October. More details will be included with next month's issue of Relate.

Correction

In the case of Unemployment Assistance, Farm Assist and Disability Allowance, when assessing a spouse/partner's income from employment, travel to work expenses are not deducted from gross income where the spouse/partner works four or more days a week. The July 2006 issue of Relate incorrectly stated that such expenses were deducted in these cases.

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