



Relate

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Assessment of need

The Disability Act 2005 provides for, among other things, the assessment of need of people with disabilities and the consequent drawing up of service statements.

The assessment of need is carried out or arranged by assessment officers who are independent officers of the Health Service Executive (HSE). After the assessment, a service statement is drawn up by a liaison officer who is also an independent HSE official. There is an independent complaints and appeals machinery for people who are dissatisfied with the assessment, the service statement or with the subsequent provision of services.

The Disability Act 2005 (Commencement) Order 2007 (SI 234/07) brought the relevant part of the Act (Part 2) into effect from 1 June 2007 for children under the age of five. It is intended that this part will be gradually brought into effect for other age groups so that everyone with a disability will be covered by 2011. This time scale is set out in the Department of Health and Children Sectoral Plan under the Disability Act 2005 (available at www.dohc.ie). (See Relate, September 2006 for more information on sectoral plans.)

The Disability (Assessment of Needs, Service Statements and Redress) Regulations 2007 (SI 263/07) set out detailed rules for the implementation of Part 2 of the Disability Act.

The Health Information and Quality Authority (HIQA) have adopted standards for the assessment of need – see below for further information about HIQA.

The Education for Persons with Special Needs Act 2004 provides for, among other things, needs assessments for people with special educational needs. The main parts of this Act are not yet in effect. It is expected that they will be brought

into effect when the assessment of need provisions of the Disability Act are extended to those aged 5-18. The National Council for Special Education (NCSE) has been established on a statutory basis and it may be required to carry out certain functions under Part 2 of the Disability Act.

Here we describe how the assessment of need provisions are being implemented. The rules will apply to all assessments although at present they apply only to children under five. All parts of the process, including applications, replies and correspondence between the HSE and the NCSE, must be in writing – this means that the documents are accessible under freedom of information or data protection legislation. It also means that information on the needs of people with disabilities and the services being provided to them will be more readily available. The HSE is obliged to keep records of assessments and services. Each year, the HSE must compile a report on the total needs identified in the assessment reports and the ideal timescale within which those needs should be met.

Who is entitled to an assessment

You are entitled to an assessment of need if you have a disability as defined in the Disability Act. You have a disability if there is a substantial restriction in your capacity to carry on a profession, business or occupation or to participate in social or cultural life because of an enduring physical, sensory, mental health or intellectual impairment. For the purposes of the assessment of need, the legislation states that a "substantial restriction" means that you have a restriction which is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significantly disordered cognitive processes, and means that you have a need for services to be provided continually or, in the case of a child, you have the need for services to be provided early in life to ameliorate the disability.

If you consider that you have a disability you may apply (in writing) to the HSE for an assessment. If you are unable to form that opinion yourself and certain people consider that you have a disability they can apply for an assessment in the same way. Alternatively HSE officials may arrange for such an application or may ask the HSE to carry out an assessment. The people who may apply on your behalf are spouses, parents, relatives, guardians, legal representatives and personal advocates. In the case of children under five, the applicant for the assessment is the parent or guardian (or the HSE if the child is in care).

Application forms are available from GPs, pharmacies, hospitals and Local Health Offices. They may also be downloaded from the HSE website www.hse.ie or you may contact the HSE information line: 1850 24 1850.

Getting an assessment

You must apply to the HSE in writing (via your Local Health Office using the official application form) and the HSE must acknowledge your application within 14 days. This acknowledgement must tell you the date on which the assessment will start. The Act provides that the assessment must be started within three months of the application and must be completed without undue delay – there is no specific time limit on its completion. The regulations, however, provide that the HSE must complete the assessment within three months unless there are exceptional circumstances. If there is a delay in completing the assessment you must be told the reason and given a timescale for completion.

The following applies generally to assessments of need but is not yet immediately relevant.

You may be refused a HSE assessment if you have already had such an assessment and the review period has not yet expired or, if you are a child, you had an assessment in the previous 12 months. You may, however, look for a new assessment if there has been a change in circumstances or further information is available or you consider that there was a mistake of fact in the assessment report.

If you are already being or have been assessed under the Education for People with Special Needs Act (which, as already stated, is not yet in effect in relation to assessment of needs) you will not generally be entitled to a HSE assessment. However, if the educational assessment shows that you need health services, it must be sent to the HSE for the purposes of drawing up a service statement.

Carrying out the assessment

The HSE has appointed assessment officers who are independent in carrying out their functions. They are based in Local Health Offices and they may be able to help you to fill in the application form and give you whatever information you need. The assessment officers can carry out the assessment themselves or authorise other HSE employees or other experienced people to do so. These people are called assessors. There are provisions for co-operation and co-ordination between this assessment process and the arrangements for the assessment of educational need under the Education for Persons with Special Needs Act.

The assessment must be carried out in accordance with the standards adopted by the Health Information and Quality Authority (HIQA). These standards deal with a range of issues, including Garda clearance for the people carrying out the assessment, the provision of clear and accessible information to applicants and their representatives and the handling of confidential information.

The aim of an assessment is to decide what health and education needs arise from your disability and what services you require to meet those needs. Health services include personal social services and include services provided directly by the HSE and services provided on behalf of the HSE (many of the services for people with intellectual disabilities are provided by voluntary bodies on behalf of the HSE).

The National Council for Special Education (NCSE) is required to help the HSE in the assessments of need for adults with disabilities and the preparation of service statements. In the case of children, if the assessment identifies the need for education services, the assessment officer must refer the matter to the education service provider (usually a school) or the NCSE.

The assessment identifies your needs. It does not take account of the costs of providing for those needs or whether the capacity to provide services to meet the needs is present.

Your role in the assessment

The assessment officer may interview you and your parent, guardian, legal representative or personal advocate. If an interview takes place, the assessment officer must tell you or your parent or guardian what its purpose is unless this would be prejudicial to your mental health, well-being or emotional condition or inappropriate with regard to your age or the nature of your disability. The assessment officer must try to ensure that you can understand the process as far as possible.

Assessment report

When the assessment is complete, the assessment officer writes an assessment report which is given to you, to the HSE and, if appropriate, to the NCSE (you receive the service statement (see below) at the same time). The assessment report sets out whether you have a disability and, if you have it sets out:

- A statement of the nature and extent of the disability
- A statement of the health and education needs arising from the disability
- A statement of the appropriate services to meet those needs
- A statement of the period within which a review of the assessment should be carried out (this must be no later than a year from the date the assessment report is issued)

Service statements

As already stated, the assessment of need takes account of your needs – it does not address the question of whether or not those needs can be met. The service statement does take into account if those needs can be met and how this can be done. So, the assessment of need does not take costs into account but the service statement does.

The HSE has appointed liaison officers to draw up service statements. The service statement is based on the assessment report and sets out the health and education services that will be provided to you and the time within which they will be provided. The liaison officer may ask for help from other bodies including the NCSE when drawing up this statement. In the case of children under the age of five, the service statement does not deal with educational services.

When drawing up the service statement, the liaison officer must take a number of factors into account. These include:

- The assessment report
- Your eligibility for services under the Health Acts (these include GP services, free or subsidised prescribed drugs, medicines and appliances, hospital and residential care services; there is a clear entitlement to some of these services but many of them are services which the HSE is not obliged to provide)
- Any approved standards and codes of practice which apply to the services identified in the assessment report
- The practicability of providing the services identified in the assessment report
- The need to ensure that the provision of the services by the HSE would not cause the HSE to spend more money than it is legally entitled to spend
- The advice of the NCSE about the capacity of an education service provider to afford the service in question (if this arises – not in the case of under-fives)

The liaison officer may amend a service statement if circumstances change.

The liaison officer must complete the service statement within a month of receiving the assessment report. You are given a copy of the service statement with your assessment report. The HSE, the NCSE and education service provider are also given a copy if appropriate.

The regulations specify that the service statement must be written in a clear and easily understood manner and it must state:

- The health services which will be provided to you
- The location(s) where the health service will be provided
- The timeframe within which they will be provided
- The date from which the statement will take effect
- The date for review of the provision of services specified in the service statement
- Any other information that the liaison officer considers to be appropriate including the name of any other public body to which the assessment report has been sent

Delivery of services

After the service statement is drawn up, the liaison officer then arranges the delivery of services with the various service providers. In order to do this, the liaison officer may send a copy of the service statement to a relevant public body if you agree to this (or if one of the people who is entitled to apply for an assessment of needs on your behalf agrees to this). The public body concerned is then required to communicate with you (or your representative) or the liaison officer in order to facilitate the provision of services. In effect, the onus is on public bodies to come to you with services rather than you having to approach them.

Complaints and appeals

There is an independent complaints and appeals procedure for the assessment of need process. The first is an independent but internal HSE complaints system and the second is an external appeals officer.

You may complain to the HSE about any of the following:

- A decision by the assessment officer that you do not have a disability
- A failure to carry out the assessment in accordance with standards set by the Health Information and Quality Authority (HIQA)
- A failure to carry out the assessment within the time limits
- The contents of the service statement provided to you
- A failure to provide a service specified in the service statement

Complaints must be made within three months. The complaints officer may dismiss the complaint as frivolous or vexatious but must give reasons in writing for doing this. In many cases, the officer may try to resolve the complaint informally. If this fails or if the issue is not suitable for informal resolution, the complaints officer formally investigates the complaint. You and the other people involved, for example, the assessment officer or the liaison officer or the various service providers must be heard and given the opportunity to present evidence. The complaints officer must issue a report that includes findings and recommendations. When considering the complaint, the complaints officer must consider the factors the liaison officer is obliged to take into account when drawing up the service statement – this means that the costs involved must

be taken into account. Complaint proceedings must be held in private.

Appeals officer

An independent appeals officer is to be appointed. He/she must be appointed by a public competition and may not be an employee of the HSE. An acting appeals officer has been appointed but he does not have the statutory powers available to the appeals officer under the Disability Act. You or your representative may appeal to the appeals officer against:

- A finding or a recommendation of the complaints officer
- The failure of the HSE or education service provider to implement a complaints officer's recommendations

You or your representative must lodge an appeal within six weeks. The appeals officer may appoint mediator officers who may try to mediate a settlement. However, this cannot happen if you do not agree to it. If mediation is not being used or is unsuccessful, the appeals officer must hear you and the other parties involved and has the discretion as to whether or not to have an oral hearing. This seems to mean that you and the service providers must be interviewed by the appeals officer but this need not take place in the presence of each other. An oral hearing, if it occurs, must be held in private. The appeals officer may ask the assessment officer or the liaison officer to make further inquiries. The appeals officer will have a range of powers including the power to require the production of documents, to apply to the District Court for a search warrant and to have people appear and give evidence.

The appeals officer's decision will be in writing and will be sent to you and to the service providers involved. You may appeal the decision to the High Court on a point of law.

Implementation of complaints and appeals decisions

If the HSE or the education service provider fails to implement the appeals officer's decision or the settlement agreed in the appeals mediation process or the recommendation of a complaints officer (where that has not been appealed) within three months, you or your representative or the appeals officer may apply to the Circuit Court for an order directing its implementation.

The HSE and the education service providers are also entitled to appeal to the appeals officer against a finding or recommendation of a complaints officer.

Health Information and Quality Authority (HIQA)

HIQA has been established as a statutory body from 15 May 2007. Prior to that, it had been operating on an interim basis. The legislative basis for HIQA is the Health Act 2007 – described in Relate, May 2007 and January 2007. The Health Information and Quality Authority (Establishment Day) Order 2007 (SI 227/07) provided for the establishment of HIQA. Other parts of the Health Act 2007 have also

been brought into effect by the Health Act 2007 (Commencement) Order 2007 (SI 226/07) and the Health Act 2007 (Commencement) (No. 2) Order 2007 (SI 262/07).

HIQA and the Office of the Office of the Chief Inspector of Social Services are now in a position to carry out many of their functions. The parts of the Act dealing with the regulation of designated centres are not yet in effect.

Garda complaints

The new body to deal with complaints about the Gardaí – the Garda Síochána Ombudsman Commission (GSOC or Garda Ombudsman) – has been established and is in operation since 9 May 2007. The Garda Ombudsman was established under the Garda Síochána Act 2005 and it has replaced the Garda Complaints Board. One of the main differences is that the Garda Ombudsman has its own investigative staff. The Complaints Board was required to use Gardaí to investigate complaints. The Garda Ombudsman also has powers to investigate Garda behaviour even if there is no complaint from a member of the public. Here we describe how the Garda Ombudsman operates but with the main emphasis on how it deals with complaints from members of the public.

Existing complaints to the Garda Complaints Board

Some complaints received by the Garda Complaints Board before the Garda Ombudsman started operations (that is, before 9 May 2007) are being dealt with by the Garda Ombudsman. Those cases where the investigation had actually started are being finished under the old Complaints Board processes.

appears that a Garda may have committed an offence or behaved in a manner that would justify disciplinary proceedings or the Minister for Justice, Equality and Law Reform may refer such a situation to the Garda Ombudsman.

The Garda Ombudsman

The main functions of the Garda Ombudsman are:

- To deal with complaints from the public concerning the conduct of Gardaí
- To report the results of its investigations to the Garda Commissioner and, if appropriate, to the Director of Public Prosecutions (DPP)
- To conduct other investigations of matters concerning the conduct of Gardaí
- To examine the practices, policies and procedures of the Gardaí in order to reduce the incidence of complaints

The Garda Ombudsman may be involved in investigating Garda behaviour even if there is no complaint from a member of the public. The Garda Commissioner is obliged to refer to the Garda Ombudsman any matter that appears to indicate that the conduct of a Garda may have resulted in the death of, or serious harm to, a person. The Garda Ombudsman may itself instigate an investigation if it

Matters about which you may complain

You may complain about any conduct of a Garda which is alleged to be misbehaviour. Misbehaviour is conduct which constitutes an offence or a breach of discipline. Breach of discipline includes discourtesy, neglect of duty, falsehood or prevarication, abuse of authority, corrupt or improper practice, misuse of money or property in the custody of the Gardaí, being drunk or affected by drugs and discreditable conduct.

Who may complain

You may complain if you are directly affected by the conduct or if you witnessed it. Someone else may complain on your behalf if you agree to that or if you are unable to agree to it because you are too young, or because of a physical or mental condition. You must make the complaint within six months of the conduct giving rise to the complaint but the Garda Ombudsman may extend this time limit if there are good reasons.

How to make a complaint

You may make a complaint in a number of ways:

- You may complain directly to the Garda Ombudsman. You may do this by calling in person, writing to them, phoning them or using their on-line complaint form.
- You may complain to the Garda Commissioner or any member of An Garda Síochána at any Garda Station; the complaint is then sent to the Garda Ombudsman.
- You may complain to any member of An Garda Síochána at or above the rank of Chief Superintendent at any place – again, the complaint is forwarded to the Garda Ombudsman.

There are forms available for making complaints. If you make the complaint in person, it must be recorded. In all cases, you must get a written acknowledgement of the fact that you made a complaint. The Garda Commissioner is notified of the complaint – either by the Garda Ombudsman or by the Garda to whom you complained.

The Garda Ombudsman decides if the complaint is admissible. It may be inadmissible for a number of reasons, for example, because you are not entitled to complain or because it is outside the time limit. It may also be inadmissible because it relates to the general direction and control of the Gardaí rather than individual Garda misbehaviour. In general, complaints against off-duty Gardaí are not admissible unless the conduct in question would discredit the Gardaí or in cases involving the death of, or serious harm to, a person as a result of Garda operations or while in Garda custody. You must be informed in writing if your complaint is considered inadmissible.

How the Garda Ombudsman deals with the complaint

If the Garda Ombudsman decides that your complaint is admissible, there are different procedures for dealing with it. It may be informally resolved or it may be formally investigated.

There are detailed procedural rules about the different methods of investigation and about informing you and the Garda in question about the progress and outcome of the investigation. In general, the Garda about whom a complaint is made is informed of the nature of the complaint and of the name of the person making it. However, if the complaint alleges criminal behaviour, the Garda may not be told at an early stage of the proceedings.

Informal resolution

Minor grievance or concern

If you are concerned about some aspect of a Garda's

behaviour which you think needs to be addressed but is not sufficiently serious for a formal complaint, you may raise the matter at a Garda station without starting an official complaint process – the Garda Ombudsman calls this "initial local intervention". If you do this, you should be contacted by a Garda who is in a position to help you. There are no time limits for informal resolution. If you are not satisfied with the response you may then make a formal complaint. The time spent on the attempt to solve the problem informally does not cause your formal complaint to be considered out of time.

Formal complaints

Less serious formal complaints may be informally resolved (including by mediation) if a number of conditions are met. The decision as to whether or not complaints are to be informally resolved depends on the facts in each case. Certain complaints may not be informally resolved (see below).

Informal resolution is not possible unless you and the Garda in question agree to this. If the complaint is informally resolved, no action is taken against the Garda and the complaint is not recorded on the Garda's personnel file. Informal resolution and mediation are confidential procedures. This means that anything said during the procedure may not be used in civil (including disciplinary) proceedings or criminal proceedings. You may ask for a formal investigation at any stage during the informal resolution process.

The legislation provides that the following complaints may not be informally resolved:

- Complaints about the death of, or serious harm to, a person as a result of Garda operations or while in Garda custody
- Complaints about conduct that may constitute a criminal offence
- Complaints which, in accordance with the guidelines, are not considered to be suitable for informal resolution

The Garda Ombudsman has issued guidelines for the informal resolution of certain complaints. These guidelines state that the following complaints are not considered suitable for informal resolution:

- Misconduct resulting in actual bodily harm to a person
- Misconduct resulting in the Garda achieving some improper advantage or financial gain
- Ill-treatment of people in Garda custody
- Mistreatment by way of inducements
- Engaging in a prohibited, inappropriate or incompatible occupation or business
- Abuse of office
- Behaviour of such gravity as brings serious discredit to the force

Complaints which would normally be considered suitable for informal resolution may be subject to formal investigation if the Garda Ombudsman finds that there is a trend of misbehaviour by a Garda or Gardaí over a period of time.

The informal resolution may be undertaken by a case officer of the Garda Ombudsman or by a Garda of higher rank than the Garda who is the subject of the complaint. If the informal process is not successful – that is, if you and the Garda concerned are not satisfied with the outcome – then mediation may be considered or the matter may go for investigation.

Mediation involves the appointment of an independent mediator to facilitate a resolution. The mediator may be a member of the Garda Ombudsman staff or an independent mediator – in either case, the mediator is accredited. Mediation is possible only if you and the Garda concerned agree to it. If mediation fails, then the case goes for formal investigation.

Formal investigation

If the complaint is not suitable for informal resolution or the informal process fails, the Garda Ombudsman may either:

- Refer the complaint to the Garda Commissioner for investigation under the Garda Disciplinary Regulations; this investigation may be supervised by the Garda Ombudsman
- Conduct an investigation itself or direct one of its officers to investigate the complaint

If the complaint relates to the death of, or serious harm to, a person as a result of Garda operations or while in Garda custody or care, the Garda Ombudsman must immediately direct a designated officer to examine the complaint and make a recommendation about whether it should be investigated by the Garda Ombudsman itself or by an officer of the Commission.

Complaints which have been investigated by one method may subsequently be investigated by another if the investigation requires this.

Investigation by Garda Commissioner

If the complaint is referred to the Garda Commissioner, he or she appoints a Garda to investigate under the Garda Disciplinary Regulations. The appointed Garda must have had no connection with any aspect of the case. The Garda Ombudsman may require that no Garda be appointed without its approval. It may also decide to supervise the investigation if it considers a supervised Garda investigation to be the public interest.

If an unsupervised investigation is carried out and you are unhappy with it or with any disciplinary action taken as a result, you may ask the Garda Ombudsman to review it.

Garda Ombudsman investigation

The Garda Ombudsman must investigate any case of death or serious harm arising from any person having been in contact with the Gardaí. This would include any death in custody, or shortly after release from custody, or the death or serious injury of any person as a result of an incident involving a Garda vehicle.

It is expected that the Garda Ombudsman will itself investigate all incidents where the Gardaí use firearms and where serious criminal activity is alleged.

The Garda Ombudsman and its staff have extensive powers to conduct an investigation. These powers are broadly similar to the powers available to Gardaí when they are investigating an alleged criminal offence. They include powers to interview people and collect evidence and the power of arrest and search. The Garda Ombudsman may authorise its officers to search a Garda station if this is considered necessary. The right to search is restricted by rules about access to security information. The Garda Ombudsman does not have the power to direct anyone to give information relating to the security of the State. The Minister for Justice, Equality and Law Reform may issue directions about such information. The Minister's actions may be reviewed by a designated High Court judge (see below).

What happens after the complaint is investigated

If the investigation shows that there has been a breach of the Garda Disciplinary Regulations, the Garda Ombudsman may make recommendations to the Garda Commissioner about taking disciplinary proceedings. If the investigation shows that a criminal offence may have been committed, the Garda Ombudsman may send the file to the Director for Public Prosecutions. If there is not enough evidence to show that there may have been a breach of discipline or a criminal offence, then the case is dismissed.

Involvement of judges

A High Court judge may be appointed to review the way in which investigations that involve issues relating to the security of the State are being operated. The judge has the right to see the information concerned when conducting this review and then reports to the Taoiseach. A judge may also be appointed to review the investigation of a complaint by a designated officer of the Garda Ombudsman.

Complaints about Garda Ombudsman staff

There is also a mechanism for complaining about the conduct of Garda Ombudsman staff. The Minister for Justice, Equality and Law Reform may ask the Chief Justice to appoint a Supreme Court or High Court judge to conduct an inquiry.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

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150 Upper Abbey Street Dublin 1
Lo-call: 1890 600 800
www.gardaombudsman.ie

It is also intended to open offices in Roscrea and Longford.

Garda Síochána Inspectorate

The Garda Ombudsman is a separate body from the Garda Síochána Inspectorate which has also been recently appointed. The objective of the Inspectorate is to ensure that the resources available to the Gardaí are used to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration.

The main functions of the Inspectorate are:

- To carry out inspections or inquiries in relation to any particular aspects of the operation and administration of the Gardaí
- To submit reports on these inspections or inquiries to the Minister
- To provide advice to the Minister with regard to best policing practice.

The Inspectorate has no role in investigating complaints against individual Gardaí. It has published a number of reviews of Garda procedures and practices.

Garda Síochána Inspectorate
87 St Stephen's Green Dublin 2
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Recent publications from the Citizens Information Board

The Board's series of six Disability Factsheets were reissued in May. They provide comprehensive information on entitlements for people with disabilities. These factsheets are available from your local Citizens Information Centre. You may also view them on the Board's website www.citizensinformationboard.ie



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