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*information for all*

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## Developments in Disability Policies and Services

### Education for Persons with Special Needs Act

Plans for the implementation of parts of the Education for Persons with Special Needs Act 2004 have been announced. The Act was described in the August 2004 issue of Relate.

The National Council for Special Education (NCSE) has been in operation for some time but it will be formally established on 1 October 2005 under the terms of the Act. It already has the function of allocating teaching and other resources to support children with special education needs through a network of Special Education Needs Advisors (SENAs). It now has the main responsibility for implementing the Act. One of its first tasks will be to draw up a plan for the full implementation of the Act. This plan must be drawn up within a year of its formal establishment and the plan must provide for the full implementation within five years. So, the Act should be fully in effect by October 2010.

The (NCSE) also has the following specific functions:

- ◆ providing information to schools and parents relating to best practice for the education of children with disabilities
- ◆ co-ordinating special education in conjunction with schools and the HSE
- ◆ planning for the integration of children with special needs in a mainstream setting
- ◆ monitoring the progress of students with special educational needs and reviewing the resources needed in this area
- ◆ conducting research and providing expert advice to the Minister
- ◆ reviewing the provision made for adults with disabilities to avail of higher, adult and continuing education

### Principle of Inclusive Education

The provisions of the Act which put the principle of inclusive education on a statutory basis have been brought into effect. The Act provides that children with special needs are to be educated in an inclusive setting



unless this would not be in the best interests of the child or the effective provision of education for other children in the mainstream environment.

### Special Education Appeals Board

The Special Education Appeals Board will be established on 3 April 2006. The Appeals Board will hear appeals on matters affecting the education of a child with special needs. For example, parents will be able to appeal against the refusal of an assessment of educational need and against various aspects of an education plan drawn up for the child. The Appeal Board will also deal with disputes about who is to provide a service.

### Disability Act 2005

The Disability Bill 2004 has been passed and is now the Disability Act 2005. The Bill as initially drafted was described in the October 2004 issue of Relate. Changes which were made as it progressed through the Oireachtas were described in the July 2005 issue. Some further small changes were made before it was passed. Plans for the implementation of parts of the Act have been announced

### Sectoral Plans

The provisions of the Act dealing with sectoral plans were brought into effect at the end of July 2005. The provisions on sectoral plans mean that the relevant Ministers (Health and Children; Social and Family Affairs; Transport; Communications, Marine and Natural Resources; the Environment, Heritage and Local Government; and Enterprise, Trade and Employment) must finalise their sectoral plans within a year. Draft plans have been published.

### Access to Buildings and Services

The provisions of the Act which require government departments and public bodies to make their services accessible to people with disabilities will come into effect on 31 December 2005. This includes making information available in accessible formats and providing supports to access services where practicable. Access to public buildings must be available by 2015.

### Genetic testing

The provisions dealing with limitations on the use of information obtained from Genetic Testing to ensure that people who may be affected by genetic disorders will not be subject to unreasonable requirements from

an employer or an insurance or mortgage provider will come into effect on 31 December 2005.

### Public service employment

The 3% target for the employment of people with disabilities by government departments and public bodies will be put on a statutory basis from 31 December 2005. The NDA will have responsibility for monitoring and reporting on overall compliance with this target.

### Centre for Excellence in Universal Design

The Centre for Excellence in Universal Design will be established on 1 January 2007.

### Wage Subsidy Scheme for People with Disabilities

A wage subsidy scheme has been set up to encourage the employment of people with disabilities. The scheme will start in September and be operated by FÁS through its Employment Services Offices. It aims to provide financial support to employers in the private sector who employ people with disabilities.

The disabled person must work for more than 20 hours a week. The normal employment rules apply – the employee must be paid the usual rate for the job, must pay PRSI and be covered for the full range of employment protection laws.

The subsidy will have three separate strands:

- ◆ Strand 1 is a wage subsidy payment to the employer which compensates them for a productivity shortfall that may arise. The level of subsidy varies according to the level of productivity and the number of hours worked.
- ◆ Strand 2 is a grant to cover additional management and supervisory costs where a company employs more than two people with a disability.
- ◆ Strand 3 applies to the employer who employs 30 or more workers with a disability and is a contribution towards the cost of employing an Employment Assistance Officer.

Further information is available from the FÁS Social Inclusion section: Tel: 01-607-7449  
www.fas.ie

## Higher Education Grants

The rules for qualifying for higher education grants and the amounts of the grants available were described in the May 2005 issue of Relate. Since then, increases in some of the amounts have been announced. The following replaces the relevant sections in the May issue.

### Amount of grants

The maximum maintenance grant for the academic year starting in September 2005 is €3,020 for students who could not reasonably be expected to travel daily between the normal family home and the college and whose normal family residence is not within 15 miles of the college being attended. The maximum maintenance grant for students who live in or near the college town is now €1,210.

Special rates of grants – usually called “top up” grants are paid to students from very low income families – broadly the children of long term social welfare recipients. The income limit for the top up grant for the year 2005/6 is €15,626, most of which must come from a social welfare payment. The rates for 2005/6 are €2,335 for students living away from home and €935 for those who live at home in addition to the standard grant.

### Income Limits

You may qualify for a maintenance grant for a course starting in the academic year 2005/6 if your parents' income in the year 2004 was below a certain level. The precise level depends on the number of children in the family. If there are less than 4 dependent children in the family, the income limits are as follows:

### Income is

Up to €35,485  
 €35,486 - €37,695  
 €37,696 - €39,915  
 €39,916 - €42,130

### You Get

Full Grant  
 75% grant  
 50% grant  
 25% grant

The student service charge (registration charge) is not payable where the income is less than €44,340.

The limits are somewhat higher for families with four or more dependent children. The limits are also increased if there are other children in the family pursuing further or higher education courses – the limits are increased by €4,295 for each such child.

### Nationality requirements

In the May issue we listed the nationality requirements for qualifying for a maintenance grant. One of the groups listed was people who “have been granted leave to remain in Ireland”. It seems that this is, in fact, restricted to people who have been granted humanitarian leave to remain. It seems that people who have been granted leave to remain on the basis that they were parents of an Irish born child do not meet this requirement.

## Safety, Health and Welfare at Work Act 2005

Most of the Safety, Health and Welfare at Work Act 2005 comes into effect on 1 September 2005. Several of the Act's provisions require further regulations. This Act replaces the Safety, Health and Welfare at Work Act 1989 and introduces other changes.

Among other things, it provides for higher fines for breaches of safety legislation and provides that directors and managers may be held personally liable in some cases. The Act gives the power to the Health and Safety Authority (HSA) to publish lists of employers who have been found to be in breach of the Act. The Act allows for regulations to be made for on the spot fines for breaches of health and safety rules. It is expected that this system will be used for relatively minor breaches. The maximum fine is €1,000.

Two sets of regulations are in the process of being completed and should be enforced within the next few months – the Construction Regulations and General Application Regulations. The Construction Regulations deal with the detailed health and safety requirements for the construction industry. The General Application Regulations deal with health and safety matters relating to signage, worker protective equipment, manual handling, electricity, first aid, night and shift work, pregnant employees and young people.

Employers and employees have obligations under the Act.

## Obligations of employees

As an employee, you must:

- ◆ comply with the safety and health laws which are relevant to your work
- ◆ not be under the influence of an intoxicant at the place of work to the extent that you are likely to endanger your own safety, health or welfare at work or that of any other person
- ◆ not engage in improper conduct or behaviour
- ◆ wear personal protective clothing where necessary
- ◆ cooperate with your employer and look out for one another
- ◆ not do anything which would place yourself or others at risk

If you are working in a safety critical situation, you may be required to undergo a periodic medical assessment of fitness to work.

Your employer may require that you be tested for intoxicants. This section of the Act is not yet in force and the HSA will be consulting with the trade unions and employer representatives about its implementation. The Minister has said that it is not the intention to bring this into effect on a universal basis but rather to introduce regulations for testing in safety critical situations and on a sectoral basis.

## Rights of employees

Employees may not be dismissed or penalised for carrying out their safety duties. An employee who is dismissed or penalised may appeal to a Rights Commissioner and, if necessary, may further appeal to the Labour Court.

## Safety Representatives

Employees will continue to be entitled to select and appoint Safety Representatives who will have wide powers to, among other things inspect, investigate accidents or dangerous occurrences and accompany a HSA inspector on an inspection.

## Employers

Employers are responsible for providing a safe place of work. As an employer, you must do all you can, as far as reasonably practicable, to ensure the safety, health and welfare of your employees. Among other things, you are responsible for ensuring that your employees are adequately trained and that they do not lose earnings while undergoing training. You must consider representations made by your employees' Safety Representatives. You must also ensure that other people at your work place are not exposed to risks to their safety, health or welfare.

## Designers, Manufacturers, Importers

They must ensure, as far as reasonably practicable, that anything which they design, manufacture or import is properly tested and safe and that adequate information is provided to ensure safe and proper use.

## Construction of Places of Work

People who commission, procure or construct a place of work must appoint a competent person to ensure that construction is carried out safely and properly and without risk to health or safety.

## Safety Statement

Employers with 3 or fewer employees will not have to have an up-to-date safety statement. However, they must comply with a code of practice for their industry or sector which will be developed by the HSA.

## Joint Safety and Health agreements

Trade unions and employers in an industry or sector may get together to agree practical guidance on health and safety. If they reach agreement, it may be recognised by the HSA and taken into account in enforcement.

## Implementation

Responsibility for implementing the safety, health and welfare at work rules lies largely with employers. The Health and Safety Authority has a range of powers to ensure compliance with the regulations.

Health and Safety Authority  
10 Hogan Place  
Dublin 2  
Tel: 1890 289 389  
[www.hsa.ie](http://www.hsa.ie)

## Employment Permits Bill 2005

The Employment Permits Bill 2005 has been published. It proposes to give a statutory basis to the procedures for the application, grant and refusal of work permits. (The current rules are described in the July 2004 issue of Relate). It will apply to workers from non-European Economic Area countries (the 25 member states of the EU and Norway, Iceland and Lichtenstein. Switzerland is not an EEA member but is covered by basically the same rules as EEA members).

### Green Card Work Permit

The new Bill also proposes the introduction of a "green card" type system for highly skilled migrant workers. They will be people with specified skills and they will be given the right to work and live in Ireland for a specified period. Every two years, the Minister for Enterprise, Trade and Employment will set the maximum number of these work permits to be granted – in total and in specific sectors. A policy paper will be published in the Autumn setting out the plans in this area.

### Protection for migrant workers

The Bill also sets out measures for the protection of migrant workers.

The system whereby the employer applies for the work permit will continue but the permit will be granted to the worker. The permit will contain a statement of the

rights and entitlements of the worker. The permit will relate to work with the employer who applied for it. The statement of rights will include the information that the worker may change employment through the application for another work permit by a new employer.

Employers will not be allowed to deduct expenses associated with recruitment from the employee's pay and will not be allowed retain any of the worker's personal documents.

Fines for breaches of the new rules may be up to a maximum of €50,000 or up to five years imprisonment.

The Bill is available at:  
[www.entemp.ie/publications/employment/2005/employmentpermitsbill.pdf](http://www.entemp.ie/publications/employment/2005/employmentpermitsbill.pdf)

## Garda Síochána Act 2005

The Garda Síochána Act 2005 provides for the regulation of the Gardaí and the replacement of the current Garda complaints system by the establishment of an Ombudsman Commission and Inspectorate for the Gardaí. The Act consolidates a number of the existing rules on the role of the Gardaí. Here we give a summary of the Act concentrating mainly on the new complaints system.

The Act provides that the Minister for Justice, Equality and Law Reform has the power to make various regulations relating to the Gardaí – for example, the numbers in the different ranks, promotion procedures, disciplinary procedures. The Minister must make regulations which facilitate Gardaí to confidentially report allegations of corruption or malpractice (a "whistleblowers charter").

### Functions of the Gardaí

The Act sets out the functions of the Gardaí as providing policing and security services for the State with the objective of:

- ◆ preserving peace and public order
- ◆ protecting life and property
- ◆ vindicating the human rights of each individual

- ◆ protecting the security of the State
- ◆ preventing crime
- ◆ bringing criminals to justice, including by detecting and investigating crime, and
- ◆ regulating and controlling road traffic and improving road safety

### Role of the Gardaí in prosecutions

The Act puts the role of the Gardaí in prosecutions on a statutory basis. The Director of Public Prosecutions (DPP) has the main role in the prosecution of crime and may direct the Gardaí in starting or conducting criminal proceedings. The Gardaí may start and conduct a prosecution in the name of the DPP in a court of summary jurisdiction – the District Court.

## Reserve members of the Garda

The Act provides for the appointment of reserve Gardaí who could be appointed if they have been trained. Reserve Gardaí would have the same powers as full Gardaí while on duty. Reserve Gardaí may be appointed only if the Garda Commissioner has submitted proposals to the Minister for Justice, Equality and Law Reform for their training and regulations have been made for their recruitment, training and the conditions of service. The Commissioner has the power to decide what the reserve Gardaí may do.

## Code of Ethics

The Minister must set out a code of ethics for all Gardaí. This must be done after consultations with the Garda Commissioner. The Minister may ask the Commissioner to draw up a draft of the code and, if this happens, the Commissioner must consult with a number of bodies including the Human Rights Commission and the Equality Authority.

## Roles of the Minister and Garda Commissioner

The Act sets out the different roles of the Minister and the Garda Commissioner. It provides that the Minister may, from time to time, determine and revise the priorities of the Gardaí in the carrying out of their functions and establish and revise performance targets. The Minister must consult with the Commissioner before doing this. Copies of the priorities and performance targets must be laid before the Houses of the Oireachtas. The Commissioner must submit a strategy statement to the Minister every three years and a policing plan every year. At the end of each three year period, the Commissioner must report on the efficiency and effectiveness of the management and deployment of resources during that period.

The Minister, following the approval of the government, may issue written directives to the Commissioner. Such directives must be laid before the Houses of the Oireachtas but the details may be left out if publishing them could prejudice the security of the state or impede the prevention, investigation or prosecution of an offence.

## Accountability of Gardaí

The Garda Commissioner is accountable to the Minister for Justice, Equality and Law Reform and the Government through the Secretary General of the Department for the performance of the Gardaí. The Commissioner is obliged to keep them informed and to provide various documents. Each individual Garda is obliged to account to a more senior member of the

Gardaí for any act or omission. The Garda Commissioner will be the accounting officer for the funds allocated to the Gardaí – this is currently done by the Secretary General of the Department.

## Joint policing committees with Local Authorities

The Act provides for the establishment of joint policing committees with local authorities. The Minister is obliged to issue guidelines to the Garda Commissioner and the local authorities on these committees after consulting with the Minister for the Environment, Heritage and Local Government and the Minister for Community, Rural and Gaeltacht Affairs. The committees may have members from the local authorities and members of the Oireachtas as well as Gardaí. The Chair will be a local authority member. (The original proposal was that the members would come from the city/county development boards but this was changed during the Oireachtas debate)

The general function of the joint policing committees will be to serve as a forum for consultations, discussions and recommendations on matters affecting the policing of the local authority's area. They will keep under review the levels and patterns of crime, disorder and antisocial behaviour in the area (including the patterns and levels of misuse of alcohol and drugs) and the factors underlying and contributing to the levels of crime, disorder and anti-social behaviour in the area. They will also advise the local authority concerned and the Gardaí on the performance of their functions, arrange public meetings on matters of local policing concern and establish local policing fora.

## Installation of CCTV

The Garda Commissioner may authorise the installation and operation of closed circuit TV (CCTV) in public places (property owners are entitled to install CCTV on their own premises). This authorisation may be given to a range of people including people whose application has been approved by the local authority after consultation with the joint policing committee. The Gardaí are entitled to have access to the CCTV in order to retrieve data and information.

## Garda Síochána Ombudsman Commission

The Act provides for the establishment of the Garda Síochána Ombudsman Commission. The Commission will be an independent body and will consist of three people (at least one man and one woman) who will be appointed by the President on the nomination of the government and the approval of that nomination by the Oireachtas.

The Commission will replace the current Garda Complaints Board. As well as carrying out its functions in relation to complaints, the Commission will also aim to promote public confidence in the complaints resolution process. The main functions of the Ombudsman Commission are:

- ◆ To deal with complaints from the public concerning the conduct of Gardaí
- ◆ To issue guidelines for the informal resolution of certain categories of complaints
- ◆ To report the results of its investigations to the Garda Commissioner and, if appropriate, to the DPP
- ◆ To conduct other investigations of matters concerning the conduct of Gardaí
- ◆ To examine practices, policies and procedures of the Gardaí

The Commission may appoint its own staff. The Commission may make arrangements for the temporary employment of Gardaí or members of police forces in other jurisdictions as members of its staff. If this happens, the Gardaí concerned will not be answerable to the Garda Commissioner while working for the Ombudsman Commission and, if conducting investigations will only have the powers conferred on designated officers of the Commission and not the range of powers available to Gardaí generally.

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.

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 of your age, 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 Commission may extend this time limit if there are good reasons.

The Garda Commissioner is obliged to refer to the Ombudsman Commission 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 Ombudsman Commission may itself instigate an investigation if it 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 Commission.

The Act sets out detailed procedures for the making of a complaint. In summary, you may complain directly to the Commission or at the Garda station. The Commission decides if the complaint is admissible. It is inadmissible if it relates to the general direction and control of the Gardaí or if it is a complaint about an off duty Garda unless the conduct in question would discredit the Gardaí.

If the Commission decide 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 the complainant and the Garda in question about the progress and outcome of the investigation.

### Informal Resolution

The Ombudsman Commission may issue guidelines for the informal resolution (including by mediation) of certain complaints. These are complaints other than

- ◆ 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 an offence
- ◆ Complaints which, in accordance with the guidelines, are not considered to be suitable for informal resolution

The guidelines may include arrangements for the Commission to decide whether or not informal resolution is appropriate. Informal resolution is not possible unless you and the Garda in question agree to this. If the complaint is informally resolved, there will be no action taken against the Garda. If the complaint is not suitable for informal resolution or the informal process fails, the Commission may either:

- ◆ Refer the complaint to the Garda Commissioner
- ◆ Conduct an investigation itself
- ◆ Direct an officer of the Commission 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 Commission must immediately direct a designated officer to examine the complaint and make a recommendation about how it

should be investigated. Complaints which have been investigated by one method may subsequently be investigated by another.

### Investigation by Garda Commissioner

If the complaint is referred to the Garda Commissioner, he 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 Commission may require that no Garda be appointed without its approval. It may also decide to supervise the investigation if it considers it in the public interest to do so.

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 Ombudsman Commission to review it.

### Commission Investigation

The Act sets out the rules for an investigation by the Commission and the powers available to the Commission to interview people and collect evidence. This includes the power to ask the Circuit Court to require a person to co-operate. The Commission 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 the designated High Court judge (see below). The Commission may recommend that disciplinary action be taken against the Garda in question.

### Investigation by an officer of the Commission

Officers of the Commission have broadly the same powers of investigation as Gardaí have when they are investigating an alleged offence including the power of arrest and search. They may also be authorised to search a Garda station if the Commission issues the necessary authorisation. The right to search is restricted by rules about access to security information. The officer reports the results of the investigation to the Commission and this may then be referred to the Director of Public Prosecutions.

### Involvement of Judges

A High Court judge may be appointed to keep under review how investigations are being operated which involve issues relating to the security of the state. The judge will have the right to see the information concerned when conducting this review and will then report to the Taoiseach. A judge may also be appointed to review the investigation of a complaint by a designated officer of the Ombudsman Commission.

### Garda Síochána Inspectorate

The Garda Inspectorate will be an independent three person (at least one man and one woman) body appointed by the government. One of the members will be the Chief Inspector. The objective of the Inspectorate is to ensure that the resources available to the Gardaí are used so as 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

### Implementing the Act

The Minister for Justice, Equality and Law Reform has established an Implementation Advisory Group which will report before the end of December 2005. A number of provisions came into effect on 15 July 2005. These are mainly the provisions dealing with accountability. Gardaí must now account for their actions while on duty. The requirements for the Garda Commissioner to account to the Government through the Secretary General of the Department are also in force. The power of the Minister to make regulations relating to the reporting of corruption and malpractice are also in force ("whistleblower's charter"). The Minister has said he intends to start bringing the Ombudsman Commission provisions into effect in the Autumn. It is expected that appointments will be made to the Inspectorate in the near future.

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