



---

**AN BILLE UM CHOMHAIRLE (LEASÚ) 2004  
COMHAIRLE (AMENDMENT) BILL 2004**

---

*Mar a tionscnaíodh  
As initiated*

---

ARRANGEMENT OF SECTIONS

Section

1. Definition.
2. Amendment of section 2(1) of Principal Act.
3. Amendment of section 7(1) of Principal Act.
4. Personal advocates.
5. Amendment of section 9 of Principal Act.
6. Amendment of section 11 of Principal Act.
7. Short title, collective citation and commencement.

ACTS REFERRED TO

Comhairle Act 2000

2000, No. 1

Data Protection Acts 1988 and 2003

Petty Sessions (Ireland) Act 1851

14 & 15 Vict., c. 93



---

**AN BILLE UM CHOMHAIRLE (LEASÚ) 2004  
COMHAIRLE (AMENDMENT) BILL 2004**

---

# **BILL**

*entitled*

5 AN ACT TO AMEND THE COMHAIRLE ACT 2000 TO  
AMEND AND EXTEND THE FUNCTIONS OF COMH-  
AIRLE, TO MAKE CERTAIN CHANGES TO ITS MEM-  
BERSHIP AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 **1.**—In this Act “Principal Act” means Comhairle Act 2000. Definition.

**2.**—Section 2(1) of the Principal Act is amended by the insertion Amendment of  
section 2(1) of  
Principal Act.  
of the following definitions:

“ ‘the Director’ has the meaning assigned to it by section 7A;

15 ‘disability’, in relation to a person, means a substantial restriction in  
the capacity of the person to carry on a profession, business or occu-  
pation in the State or to participate in social or cultural life in the  
State by reason of an enduring physical, sensory, mental health or  
intellectual impairment;

20 ‘Personal Advocacy Service’ has the meaning assigned to it by  
section 7A;

‘personal advocates’ has the meaning assigned to it by section 7A;

‘qualifying person’ has the meaning assigned to it by section 7A;

25 ‘social service’ means any service provided by a statutory body or  
voluntary body that is available or accessible to the public generally  
or a section of the public pursuant to statute or otherwise and  
includes, but is not limited to, a service in relation to any of the  
following, namely, health, social welfare, education, family support,  
housing, taxation, citizenship, consumer matters, employment and  
training, equality, asylum and immigration;”.

30 **3.**—Section 7(1) of the Principal Act is amended by the substi- Amendment of  
section 7(1) of  
Principal Act.  
tution of the following paragraphs for paragraphs (b) and (c):

“(b) to support the provision of or, where the Board considers  
it appropriate, to provide directly, advocacy services to

individuals, in particular those with a disability, that would assist them in identifying and understanding their needs and options and in securing their entitlements to social services,

(bb) to provide, or to arrange for the provision of, a Personal Advocacy Service to qualifying persons and, in so doing, the Board shall take account of the following: 5

- (i) the financial resources of the Board; and
- (ii) whether qualifying persons can obtain advocacy services otherwise than under this Act, 10

(c) to support, promote and develop—

- (i) greater accessibility, co-ordination and public awareness of social services, and
- (ii) the provision and dissemination of integrated information in relation to such services by statutory bodies and voluntary bodies,”. 15

Personal advocates. 4.—The Principal Act is amended by the insertion of the following sections after section 7:

“Personal  
Advocacy  
Service.

7A.—(1) The Chief Executive may designate such and so many members of the staff of the Board as he or she considers appropriate to be personal advocates to qualifying persons (hereinafter referred to as ‘personal advocates’) and a person so designated shall hold office as a personal advocate for such period as the Chief Executive may determine. 20 25

(2) A person is a qualifying person for the purposes of this Act if—

(a) he or she is not less than 18 years of age and, in the opinion of the Director— 30

(i) is, by reason of a disability, unable to obtain or has difficulty in obtaining a particular social service or services without the assistance or support of a personal advocate, and 35

(ii) there are reasonable grounds for believing that there is, in relation to the person, a risk of harm to his or her health, welfare or safety if he or she is not provided with the social service or services that he or she is seeking to obtain, 40

or 45

(b) he or she is under 18 years of age and—

- (i) his or her sole parent or guardian is a qualifying person, or
- (ii) he or she has a disability or, in relation to whom, in the opinion of the Director, there are reasonable grounds for believing that he or she has a disability, and in either case the circumstances are such that it would be unreasonable to expect a parent or guardian of the person to act on his or her behalf in obtaining a particular social service or services without the assistance or support of a personal advocate,

and, in the opinion of the Director, there are reasonable grounds for believing that there is, in relation to the person, a risk of harm to his or her health, welfare or safety if he or she is not provided with the social service or services that he or she is seeking to obtain.

(3) The Board shall have regard to the following to determine the order of priority to be accorded to different qualifying persons in the assignment of personal advocates to such persons:

- (a) the needs of qualifying persons to have personal advocates assigned to them;
- (b) the degrees of risk of harm to the health, welfare or safety of qualifying persons if they are not provided with the social service or services that they are seeking to obtain;
- (c) the benefits likely to accrue to qualifying persons if personal advocates are assigned to them;
- (d) the availability to qualifying persons of advocacy services otherwise than under this Act; and
- (e) such other matters as the Board considers appropriate or as may be prescribed by regulations made by the Minister.

(4) The service provided to qualifying persons under this section and sections 7B to 7D shall be known, and is in this Act referred to, as the 'Personal Advocacy Service'.

(5) The Board may, with the approval of the Minister and the consent of the Minister for Finance, appoint a person who shall be known as the Director of the Personal Advocacy Service, and is referred to in this Act as 'the Director', to

perform the functions conferred on the Director by this Act.

(6) Subsections (2) and (4) of section 14 shall apply to the Director in the same manner as they apply to other members of the staff of the Board. 5

(7) The Director shall manage and control the Personal Advocacy Service and shall be responsible to the Chief Executive for such management and control.

(8) The functions of the Director under section 7B may be performed by such members of the staff of the Board as the Director may authorise in that behalf. 10

(9) Regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations. 15

(10) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder. 20 25

Application for assignment of personal advocate.

7B.—(1) A person who is of opinion that he or she is a qualifying person (in this section referred to as an ‘applicant’) may apply in writing, or such other form as may be specified by the Minister, to the Director for the assignment of a personal advocate to him or her and he or she shall specify in the application the social service or services that he or she is seeking to obtain. 30 35

(2) The Director shall determine whether or not an applicant is a qualifying person and, if he or she is satisfied that the applicant is such a person, he or she shall assign a personal advocate to the applicant in accordance with this Act. 40

(3) A decision to grant or to refuse to grant an application under subsection (1) shall be made and the applicant concerned shall be notified of it by the Director in writing, or such other form as may be specified by the Minister, as soon as practicable after the receipt by the Director of the application. 45

(4) If the grant of an application under subsection (1) is refused, the notification under subsection (3) shall specify the reasons for the refusal and state that the applicant concerned may apply to the Chief Executive under subsection (5) for 50

a review of the decision within the period specified in subsection (6).

5 (5) The Chief Executive, on application to him or her in that behalf in writing, or such other form as may be specified by the Minister, by the applicant concerned—

(a) may review the decision concerned, and

10 (b) following the review, may, as he or she considers appropriate, affirm or reverse that decision,

and if the decision is reversed, the application under subsection (1) concerned shall be deemed to have been granted.

15 (6) An application under subsection (5) shall be made not later than 21 days after the applicant concerned is notified of the decision of the Director under this section or, in a case in which the Chief Executive is of opinion that there are reasonable grounds for extending that period, the expiration of such longer period as he or she may determine.

20 (7) A decision under subsection (5) shall be made and the applicant concerned shall be notified of it by the Chief Executive in writing, or such other form as may be specified by the Minister, as soon as practicable after the receipt by the Chief Executive of the application under that subsection concerned.

25 (8) If a refusal to grant an application under subsection (1) is affirmed by the Chief Executive under subsection (5), the notification under subsection (7) shall specify the reasons for so doing.

30 (9) An application under subsection (1) or (5) may be made by any other person on behalf of the applicant concerned.

35 Functions of personal advocate.

7C.—(1) A personal advocate assigned to a qualifying person under section 7B shall—

40 (a) if appropriate, make or assist in making an application for an assessment under *Part 2* of the *Disability Act 2004* in respect of the person and assist, support and represent the person in accordance with the said *Part 2* in relation to the application, assessment and the service statement (if any) prepared in respect of the person,

45 (b) assist, support and represent the person—

50 (i) to apply for and obtain a social service or services specified in

the application under section 7B(1) concerned or, if appropriate, in a service statement prepared in respect of the person, and 5

- (ii) if the personal advocate considers it appropriate to do so, to pursue any right of review, reference or appeal to a body other than a court if the application for such service or services is refused, 10

and

- (c) for the purpose of assisting the person to promote the best interests of his or her health, welfare and well-being, provide support or training or both to— 15

- (i) the person, or

- (ii) a member of the person's family, a carer of the person or any other person, including a member of an organisation or group, who is actively involved in promoting the health, welfare or well-being of the person, 20 25

or both for so long as the personal advocate is performing functions under paragraph (a) or (b) in respect of the person.

(2) A personal advocate assigned to a qualifying person under section 7B may, for the purpose of performing his or her functions, at any reasonable time enter any place where day care, residential care or training is provided for the person and make such inquiries in such place in relation to the person as he or she considers appropriate. 30 35

(3) Subject to the Data Protection Acts 1988 and 2003, a personal advocate assigned to a qualifying person under section 7B may, for the purpose of performing his or her functions, do all or any of the following: 40

- (a) obtain from a statutory body or voluntary body any information relating to the person that the personal advocate considers necessary;
- (b) attend and represent the person at any meeting, consultation or discussion at which the interests of the person are being considered and which the person would have attended if he or she were not a qualifying person; and 45 50



(c) identify any person referred to in subsection (1)(c)(ii) who may assist the qualifying person.

5 (4) A statutory body or voluntary body that provides social services shall co-operate with a personal advocate in the performance of his or her functions.

10 (5) A person who by act or omission obstructs or hinders a personal advocate in the performance of his or her functions shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 or imprisonment for a term not exceeding 3 months or both.

15 (6) Proceedings for an offence under this section may be brought and prosecuted by the Minister.

20 (7) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this section may be instituted within 12 months from the date of the offence.

25 (8) In this section ‘application’, ‘assessment’ and ‘service statement’ have the meanings assigned to them respectively by *Part 2* of the *Disability Act 2004*.

Arrangement to provide services of personal advocates.

30 7D.—The Board, with the approval of the Minister and subject to such terms and conditions as are considered appropriate, may arrange for the functions of personal advocates under section 7C to be performed by persons other than members of the staff of the Board and sections 7A to 7C shall, with any necessary modifications, apply to such persons.”.

5.—Section 9 of the Principal Act is amended—

Amendment of section 9 of Principal Act.

35 (a) in subsection (1), by the substitution of “15 members” for “20 members”,

(b) in subsection (4), by the substitution of the following paragraph for paragraph (b):

40 “(b) 3 members who represent persons with a disability, and”,

(c) in subsection (12), by the substitution of “6 members” for “8 members” in both places where it occurs, and

(d) by the deletion of subsection (13).

45 6.—Section 11 of the Principal Act is amended by the substitution of the following subsection for subsection (3):

Amendment of section 11 of Principal Act.

“(3) The quorum for a meeting of the Board shall be 8 or such lesser number (being not less than 5) as the Board may from time to time determine.”.

Short title,  
collective citation  
and  
commencement.

7.—(1) This Act may be cited as the Comhairle (Amendment) Act 2004.

5

(2) The Comhairle Act 2000 and this Act may be cited together as the Comhairle Acts 2000 and 2004.

(3) This Act shall come into operation on such day or days as the Minister for Social and Family Affairs may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

10



---

**AN BILLE UM CHOMHAIRLE (LEASÚ) 2004  
COMHAIRLE (AMENDMENT) BILL 2004**

---

**EXPLANATORY MEMORANDUM**

---

*Introduction*

This Bill is a key element of the Government's legislative programme for improving services for people with disabilities. The combination of this Bill, the Disability Bill 2004 and accompanying Outline Sectoral Plans and the "Education for Persons with Special Educational Needs Act 2004" 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.

*Purpose of the Bill*

The purpose of the Bill is to amend the Comhairle Act 2000 so as to confer enhanced and additional functions on Comhairle involving, *inter alia*, the introduction of a personal advocacy service specifically aimed at people with disabilities. The Bill also seeks to make certain changes to the membership of the Board of Comhairle and to provide for related matters.

*Context*

Provisions relating to the introduction by Comhairle of a personal advocacy service and the sign language interpretation service were included in the former Disability Bill 2001. It was subsequently felt that those new services would result in such fundamental changes to the functions of Comhairle as to require a Comhairle (Amendment) Bill which would seek to amend the functions of Comhairle in line with Government policy.

Comhairle already has a statutory remit in relation to advocacy services under the Comhairle Act 2000 as reflected in its mission of information, advice and advocacy. These three elements have obvious links in ensuring that citizens have access to accurate, comprehensive and clear information on social services and should be regarded as a continuum of action towards meeting Comhairle's mission.

*Sign Language Interpretation Service*

It was intended that this Bill would provide for the introduction of a sign language interpretation service for people who are deaf or have a hearing impairment. It has been decided, however, due to certain difficulties which came to light during the drafting of those provisions that they should be removed from the Bill and introduced by way of an administrative scheme. It is felt that the provision of this service by way of primary legislation is not necessarily the most effective way of delivering a sign language interpretation service

which most likely will be contracted out to an appropriate service provider.

The Minister for Social and Family Affairs has power in the Comhairle Act 2000 to request Comhairle to design schemes relating to social services in order to address needs identified by the Minister concerning such services. The Minister proposes, therefore, to request Comhairle to prepare such a scheme relating to sign language interpretation services and to submit it for her approval. It is intended that the scheme, as approved by the Minister, will form part of her Department's Sectoral Plan as provided for under the Disability Bill and will be published in the final version of that Plan.

#### *Main Provisions of the Bill*

*Sections 1 and 2* provide for definitions of the terms used in the Bill, including "disability" and "social service". The definition of disability used is that contained in the Disability Bill 2004. Other definitions are included in relevant sections as appropriate.

*Section 3* amends and extends the statutory functions of Comhairle in three ways:—

- to provide for a personal advocacy service for people with disabilities who meet the criteria of qualifying persons having regard to the financial resources of Comhairle and whether or not advocacy services are provided elsewhere,
- to enhance an existing function of supporting the provision of, or providing directly, advocacy services for individuals, particularly those with a disability, and
- to provide an enhanced role for Comhairle in supporting and promoting greater accessibility and public awareness of social services and the provision and dissemination of integrated information in relation to those services through a wider definition of what constitutes social services as set out in *section 2*.

*Section 4* provides for the details of the personal advocacy service, including—

- the provision of a personal advocacy service to qualifying persons by personal advocates who are designated as such by the Chief Executive of Comhairle.
- the appointment by the Board of Comhairle of a Director of the personal advocacy service who shall be responsible for the management and control of the service and who shall be accountable to the Chief Executive for the performance of those functions.
- a definition of a qualifying person which, in the case of a person 18 years of age or older, is a person who in the opinion of the Director is, by reason of a disability, unable to obtain or has difficulty in obtaining a particular social service without the assistance or support of a personal advocate and there are reasonable grounds for believing that there is a risk to the person's health, welfare or safety if he or she is not provided with the social service in question. A person under 18 years of age is a qualifying person if his or her sole parent or guardian is a qualifying person or if he or she has a disability, or in the opinion of the Director there are reasonable grounds for believing that he or she has a disability, and the circumstances are such that it would be unreasonable to expect a parent or guardian to

act on his or her behalf in obtaining a particular social service without the assistance or support of a personal advocate and, in the Director's opinion, there are reasonable grounds for believing there is a risk to the person's health, welfare or safety if he or she is not provided with the social service in question.

- the criteria to which the Board shall have regard in determining the order of priority to be accorded to different qualifying persons, including the needs of qualifying persons to have personal advocates assigned to them, the benefits likely to accrue to qualifying persons of having personal advocates assigned to them and the degrees of risk of harm to their health, welfare or safety if they are not provided with the social service they are seeking to obtain.
- arrangements for making application to the personal advocacy service for the assignment of a personal advocate, for the decision process on that application, and for a review process where the applicant is not satisfied with the decision given.
- the role of the personal advocate in terms of
  - assisting, supporting and representing the qualified person to apply for and obtain a social service, including an application for an assessment of need, an assessment of need or a service specified in a service statement under the provisions of the Disability Bill 2004;
  - pursuing any right of review or appeal on behalf of the qualifying person;
  - for the purpose of assisting the qualifying person to promote the best interests of his or her health, welfare and well-being, providing support and training to that person and any member of his or her family, a carer or any other person representing the interests of the qualifying person;
  - entering any place that provides day care, residential care or training for the qualifying person for the purpose of representing his or her interests; and
  - subject to the requirements of data protection legislation, accessing information, attending meetings or consultations, and identifying any person who may assist the qualifying person for the purpose of performing his or her functions.
- the requirement that statutory or voluntary bodies shall cooperate with a personal advocate in the performance of his or her functions and provision for offences to apply to persons who obstruct or hinder a personal advocate in that context.
- provision for the making of regulations as may be required subject to the usual requirements as regards laying them before each House of the Oireachtas.
- a provision enabling the Board of Comhairle, with the approval of the Minister and subject to such terms and conditions as are considered appropriate, to arrange for the functions of personal advocates to be performed by persons other than members of the staff of the Board.

*Sections 5 and 6* provide for changes to the membership of the Board of Comhairle. In the light of operational experience since the Board was first constituted in June 2000, it is being reduced from 20 to 15 members. This reduction necessitates consequential adjustments to the number of members representing people with disabilities (which is being reduced from 5 to at least 3) and the arrangements for a quorum for Board meetings (which is being reduced from 11 members to a number between 8 and 5 as determined by the Board from time to time). In the context of the reduced Board membership and having regard to Government mainstreaming policy, the nominating role of the Minister for Justice, Equality and Law Reform in relation to members representing people with disabilities is being removed. There will be no change in the gender balance of the Board i.e. at least 40 per cent will be female members as provided for in the Comhairle Act 2000.

*Section 7* sets out standard provisions relating to the short title, collective citation and commencement arrangements for the implementation of the Bill. Different commencement dates will apply to different sections of the Bill.

#### *Financial Implications*

It is intended that the resources necessary to introduce the new personal advocacy service set out in this Bill will be sought by way of an additional allocation to Comhairle which is funded by the Department of Social and Family Affairs. Estimates as to the additional funds required in respect of the new service are currently being prepared in the context of a detailed examination of all aspects of the new service, including best estimates of take up among people with disabilities and models of best practice in other jurisdictions.

*An Roinn Gnóthaí Sóisialacha agus Teaghlaigh,  
Meán Fómhair, 2004.*