

Review of the Operation of the Disability Act 2005

SECTION	COMMENT ON SPECIFIC OPERATIONAL ISSUE	REASON FOR COMMENT
Part 1 Preliminary and General		
1. Short title and commencement		
2. Interpretation	<p>Definition of Disability</p> <p>The definition of disability in the Act has caused a number of operational difficulties. The use of a different definition of disability in the 2005 Act to that in employment equality legislation is problematic in ensuring a holistic approach to the barriers faced by people with disabilities in accessing support to work in the open labour market.</p> <p>For example, if a person qualifies as a person with a disability under the Employment Equality Act she can obtain legal redress if she is discriminated against. However, if the same person does not meet the more restrictive definition in the Disability Act, she cannot benefit from the positive action measures relating to the employment of persons with disabilities in the public service (section 47) or obtain the supports provided by means of assessment report and service statement. This is clearly contrary to the spirit and intention of the Act – which aims to further the inclusion of people with disabilities in the open labour market.</p> <p>The NDA has asserted that the use of a relatively narrow definition of disability in the Disability Act 2005 was intended to allow resources and positive measures to be focused on areas of most need. However, it was not intended that the definition</p>	<p>Definition of Disability</p> <p>The discrepancies between the definition of disability in this Act and the definition of disability in the Employment Equality Act 1998, Equal Status Act 2000 and the Education for Persons with Special Educational Needs Act 2004 are a particular cause of concern. Although some of these discrepancies were highlighted during the drafting of the 2005 Act, their full implications could not have been predicted at the time. Since the Act has been in operation for 5 years now, it is timely to consider the difficulties arising from the various definitions in operation and the impact this has on the provision of support to people with disabilities – a key aim of the Disability Act and the National Disability Strategy as a whole.</p>

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	<p>would create a two-tier system of disability support – which has in fact resulted from the discrepancies in these definitions.</p> <p>The Education for Persons with Special Educational Needs Act (EPSEN Act 2004), does not contain a definition of disability. However, the Act amends the definition of “disability” in the Education Act 1998 to the precise definition of “special educational need” as set out in the EPSEN Act 2004. In the educational sector, therefore, there was a clear intention that “special educational need” should equate to “disability” and that the definition is designed to identify who should be entitled to benefit from special services to enable them to participate in and benefit from education.</p> <p>Section 1 of the EPSEN Act 2004 defines special educational need as “in relation to a person a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition.”</p> <p>Naturally these competing definitions cause serious difficulties. The NCSE Implementation Report struggles to identify the potential demand for assessments and additional educational support. As a result, the NCSE has difficulty in obtaining accurate data on children with disabilities in the education</p>	

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	<p>system. Before EPSEN is fully implemented it will be important to rectify the discrepancies between it and the Disability Act in order to prevent further operational difficulties.</p> <p>Definition of public body and public services</p> <p>This definition focuses on the governance structure of public bodies and defines public services as those provided by such bodies. The Act places sole responsibility on public bodies in terms of their obligations to provide accessible public services etc. although in practice these services are often provided by third parties. It also conflicts with the Public Service Reform Programme, as well as commitments in the NESC report on the Developmental Welfare State concerning the vision for future public service provision in Ireland.</p> <p>Definition of Minister</p> <p>This definition should be amended to take account of developments since the Act has come into force – especially with regard to the introduction of the Office of the Minister for Equality Disability and Mental Health and the proposed move of the Disability Equality Unit to the Department of Community, Equality and Gaeltacht Affairs. Clearer overall responsibility must be established to ensure coherent implementation and monitoring of the Act’s provisions.</p>	<p>Definition of public body and public services</p> <p>The definition outlined does not fully reflect the nature and purpose of public bodies and services. In the Irish context, publicly funded services are often subcontracted to the private and non-profit sectors e.g. post offices, and public bodies often operate from buildings they do not have ownership of. The Act’s definition overlooks this context and this causes operational problems – particularly in monitoring the obligations of public bodies under the Act as will be discussed further below.</p> <p>Definition of Minister</p> <p>The Minister identified in the Act is the Minister for Justice, Equality and Law Reform. However, since the Office of the Minister for Equality Disability and Mental Health has also come into being since the Act commenced, and now since the Disability Equality Unit of the Department of Justice is moving to the Department of Community, Equality and Gaeltacht Affairs, the Act should be amended to reflect these changes and ensure a clear line of responsibility is established.</p>
3. Orders and regulations		

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4. Expenses		
5. Provision of resources and extent of provision		
6. Review of operation of Act	<p>The Act does not provide guidance on how this review should be conducted, however, several guiding principles can be drawn from the wider body of Irish disability law and policy – as well as the CRPD. Those most affected by the operation of the Act – people with disabilities and their families – have had very little opportunity to contribute to this review – a matter which is a cause for serious concern. The legacy of the Commission on the Status of People with Disabilities Report – A Strategy for Equality – highlights that effective consultation with people with disabilities and families can be conducted at grassroots level across the country – and that these individuals have a wealth of knowledge which can be used to ensure more effective operation of legislation and policy.</p> <p>Although the HSE and the NDA have played a part in bringing together family members and disability organisations respectively to contribute to this process, it is not clear whether any direct consultation with people with disabilities (other than through representative organisations, which are often composed primarily of service providers) has been conducted. In addition, information about the review is not freely available – the Department of Justice’s website merely states that the review will take place in 2010 but does not provide any information on how to contribute to this process.</p>	<p>Due to Ireland’s signature of the CRPD, the state is obliged not to take any steps which would be contrary to the spirit and intention of the Convention. Article 4(3) of the CRPD requires states to “closely consult with and actively involve persons with disabilities, including children with disabilities” in decision-making processes including developing legislation and policy. This clearly indicates that a review of the operation of the Disability Act should meaningfully include the perspectives of people with disabilities.</p>

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Part 2		
Assessment of Need, Service Statements and Redress		
7. Interpretation (<i>Part 2</i>)		
8. Independent assessment of need	<p>No consistent data has emerged from the HSE to demonstrate how independent assessments are being conducted. Only one report has been published by the HSE to date on needs assessments and service statements (in accordance with section 13) but this report does not address the different methods of conducting assessments used by early intervention teams. This lack of data prevents comparison of the effectiveness of different approaches being taken in various HSE Areas and LHO Areas. This also makes it difficult for parents to decide whether to pursue an independent assessment or to approach a specialist local service provider with a view to having their child's assessment conducted. The HIQA guidelines specified that assessments of need should be conducted in a consistent manner nationally.</p> <p>The Act does not specify structure or reporting mechanisms which should be used by early intervention teams and this lack of clarity has caused a number of operational problems in implementing this section of the legislation. Although the HIQA standards highlight the need for coordination and agreed monitoring and reporting within assessment teams no detail is provided on how this should be achieved. As a result, many different structures are</p>	<p>It appears that no single coherent approach is being taken across the country to conducting independent assessments of need. The HIQA standards for independent assessments of need are an improvement in this regard but since the only applicants who can currently qualify for assessments are children from 0-5, some concerns could be raised about whether the standards are sufficiently child and family centred. For example, the National Federation of Voluntary Bodies highlighted in its Report on Early Intervention Services that international best practice suggests that a 'one point of entry' system is required in order to effectively conduct multi-disciplinary assessments.</p> <p>Initial indications are concerning on the implementation of the Disability Act assessment of need for 0-5 year olds which suggests the need to address a broad arrange of issues. These include:</p> <ul style="list-style-type: none"> • Significant variation around the country on how the assessment of need is being implemented which is contrary to the intention of the Act. There is also no clear agreed process about the nature of the assessment and questions about the nature and purpose of the assessment. • Confusion for parents about the best option or

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	<p>being used which makes it more difficult for assessment teams to co-ordinate strategy and approaches at national level.</p> <p>The lack of roll-out to other age groups as originally envisaged in the Act has also impeded the operation of the assessment process – especially since children who received an assessment as under 5s will continue to have their needs met through service statements. However, there is currently no legislative or policy structure in place to ensure that these services will be provided in a consistent and timely manner.</p>	<p>route for their child for the assessment of need.</p> <ul style="list-style-type: none"> • The magnetising of professional staff away from interventions with children to improve their lives to the assessment process and the subsequent substantial growth of waitlists. • There is also some confusion about the assessment of children within the autistic spectrum and the availability of the necessary personnel for these assessments. • In some regions the reporting structure of early services staff need to be clarified. <p>There is serious concern that to date the implementation may not have improved the situation for children with disabilities and their families. Resolving these issues will be a priority before the roll out to the assessment of need to the 5-18 age group.</p>
9. Application for an assessment	<p>A personal advocate is named as one of the possible applicants for an independent assessment of need. However, since the Personal Advocacy Service set out in the Citizens Information Act 2007 has not yet been established, the operation of this section of the Act is restricted. In effect, since only children from 0-5 can qualify for an assessment, this section places an additional burden on parents to undertake the application process and also to pursue any complaints or appeals process which may be required.</p>	
10. Carrying out of assessments	<p>The overlap between independent assessments of need conducted under the Disability Act and EPSEN assessments has not been fully considered, since the</p>	<p>International best practice and the use of a person-centered approach would indicate that this is not the best option – particularly for children with disabilities</p>

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	<p>EPSEN Act has not yet been commenced. However at this juncture a query should be raised about whether it is an efficient use of resources to conduct two separate assessments on one child (one for health/social services and another for educational needs).</p>	<p>and their families who may find the imposition of two separate assessment processes to be overly invasive.</p>
<p>11. Service statement</p>	<p>SI 263 of 2007 requires the assessment report and service statement to be given at the same time to the parents and other relevant parties.</p>	<p>This appears contrary to the spirit and intention of the Act – which envisaged that parents/applicants would receive an assessment report first followed by a service statement. Although the system of requiring both documents to be delivered simultaneously may help to clarify parents’ expectations for service delivery, it is not strictly in accordance with the original intention of the legislation.</p>
<p>12. Exchange of information</p>		
<p>13. Maintenance of records by Executive, etc.</p>	<p>The inclusion of this section was a key concession to the DLCG and was based on recommendations in the Equal Citizens Report. Consistent records have not been published by the HSE on the basis that children’s needs change and that reports on unmet need cannot accurately reflect this. However, if regular reports were produced it is arguable that fluctuating levels of need could be more accurately accounted for. The first report under this section published by HSE in 2008 did not identify this issue as a barrier and international best practice highlights that disaggregating unmet need is possible.</p>	<p>According to this section the HSE is to report annually on discrepancies between needs identified in assessment reports and services provided. However, only one report has to date been produced.</p>
<p>14. Complaints in relation to assessments or service statements</p>	<p>As highlighted above with regard to section 9 – operational problems can result from relying solely</p>	<p>The operation of the complaints process outlined in the Act has been subject to serious criticism. De</p>

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	<p>on parents to make applications for assessments. In the case of some of the most vulnerable children, parents may not be capable of undertaking the application for assessments or pursuing complaints.</p>	<p>Wispelaere and Walsh have criticised the operation of this section on the basis that it legitimates a complex bureaucratic internal complaints process. They state that “a disabled individual is <i>effectively prohibited from</i> accessing an independent arbiter, such as the Ombudsman or the regular court system until the internal review procedures have been exhausted, which serves as a genuinely ‘dis-abling’ procedure.”</p>
15. Complaints officers	<p>Since complaints officers carry out their functions in private, and the reasons for their decisions do not have to be made public, this limits the amount of precedence which can emerge from the Disability Act.</p>	<p>De Wispelaere and Walsh highlight that the “litigation-avoidance rationale as expounded through the Act is likely to have the opposite effect. Failure to guarantee a minimum level of services, and in particular to ‘ECHR proof’ the Act, will actually increase the likelihood of resort to judicial review.”</p>
16. Appeals officer	<p>It is encouraging to note that the Office of the Disability Appeals Officer has used the 7C Principle of making good Decisions produced by the Judicial Studies Board 2008 as a basis for determining appeals. This will support the ODAO to make consistent decisions. Some useful case law has also emerged from this office – particularly in relation to age limits of children who can qualify for an assessment of need (e.g. HSE v Dykes IEHC 540).</p>	
17. Annual report and information to Minister	<p>One report to date has been completed (2008) and this provides a useful platform for future reference. This report has highlighted operational issues in respect of sections 8-11– as the vast majority of valid appeals in 2008 related to delays in assessments of need, and a minority of cases queried the types of service outlined in service statements. Further reports</p>	

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	will help to demonstrate whether these are ongoing problems – and more detailed information about the issues which gave grounds for successful appeal will also help to guide assessment officers and liaison officers in their work.	
18. Appeals from and enforcement of recommendations of complaints officer	See sections 14 and 15 above.	See sections 14 and 15 above.
19. Mediation		
20. Appeal to High Court	See sections 14 and 15 above.	See sections 14 and 15 above.
21. Regulations		
22. Enforcement of determinations, etc.		
23. Search warrants		
Part 3 Access to Buildings and Services and Sectoral Plans		
24. Definition		
25. Access to public buildings	<p>Since the process of retrofitting the buildings and transport in place prior to the commencement of the Act can be avoided on a number of grounds this has resulted in an unsatisfactory situation for many people with disabilities. Problems in operationalising this section also arise where public bodies do not own the buildings they use – as the obligation remains on the public body in question to ensure accessibility – although in practice retrofitting is generally carried out by the Office of Public Works.</p> <p>Therefore, the extension of obligations to the OPW to comply with requests within a reasonable timeframe may be required to ensure smoother operation. In addition, as described above in relation to section 2,</p>	<p>Article 9 of the CRPD outlines a right to accessible environments, which includes access to services, public buildings, transport, and information. Although significant progress is envisaged in this area at national level through, for example, the Sectoral Plans of the Department of Environment, Heritage and Local Government and the Department of Transport, it appears that Ireland is still lacking in its implementation of this provision, as recent reports of people with disabilities being unable to access polling booths in the last referendum have shown.</p>

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	<p>the definition of public bodies (and therefore, of public buildings) excludes many buildings where public services are provided (e.g. local post offices subcontracted to third parties, Citizens Information Centres where rented, public health clinics, etc.) This should be amended in order to ensure that the Disability Act has as broad a reach as possible and can further the inclusion and participation of people with disabilities in the life of the community.</p> <p>The NDA's report on the effectiveness of Part M of the Building Regulations in 2005 highlighted that the Irish guidance on accessible public buildings is by and large weak when compared with equivalent standards in other jurisdictions. The Irish guidance document is particularly weak on guidance for people with sensory impairments. In addition, several problems in enforcing Part M were identified in the NDA's report – which creates difficulties for the operation of this section of the Act. It is hoped that these issues will be addressed in the new guidance document for Part M which the Department of Environment's Sectoral Plan Progress Report states is to be published in spring 2010.</p>	
26. Access to services, etc.	See previous comment.	
27. Accessibility of services supplied to a public body	This is one of the sections of the Act which has the most potential to further the inclusion of people with disabilities. The Centre for Universal Design has developed a toolkit for accessible IT procurement,	

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	<p>which, if given a higher status through ministerial regulation could ensure more effective operation of this section.</p>	
<p>28. Access to information</p>	<p>It is unclear whether the scope of section 28, which requires public bodies to communicate with persons in a manner which is accessible to them, applies only to direct written or oral communications with specific persons, or would have a wider application to ensure that all information generally available to the public (such as public transport timetables, legislation, <i>etc</i>) is available in accessible formats.</p> <p>This provision is too narrow in its focus on people with a vision impairment to whom adaptive technology is available and is also impractical to implement in terms of designing electronic communication in accordance with relevant accessibility standards. This section should require that all electronic communications are made accessible to people with disabilities and not restrict to those with vision impairment to whom adaptive technology is available.</p> <p>According to the Measuring e-Accessibility Report (2007) all Irish government websites failed the lowest level of accessibility, conformance rating A with WCAG 1.0 when tested automatically. However 67% of these failures were classified as marginal failures i.e. the number of checkpoints under WCAG 1.0 failed were low or the number of instances of failure of a specific checkpoint were low. The</p>	<p>Given the strongly worded requirements in Article 9 of the Convention in relation to accessibility, where, for example, states are obliged to “provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms” it appears that Ireland has not achieved progressive realisation of its international obligations in this respect.</p> <p>The scope of this section should reflect that more than just people with visual impairment require electronic communications (such as websites) to be accessible. People with functional limitations due to hearing, cognitive, mobility or dexterity impairments require websites and other forms of electronic communication to be accessible and to conform to the relevant standards (WCAG 2.0). Also not everyone with vision impairment uses adaptive technology.</p> <p>Although the section of the Code of Practice which expands on and explains this provision recommends the use of the international standards for web accessibility by public bodies in reviewing and updating their websites, these guidelines are neither structured nor intended for use in situations where electronic content in only to be made accessible for people with a certain type of disability or who use adaptive technology only.</p> <p>The accessibility requirements in these guidelines are</p>

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	<p>situation is likely to have improved somewhat since 2007 but this is still a very low score.</p> <p>Although this is an indicative score and is not an absolute measurement of website accessibility, it is safe to say that according to this survey, Irish government websites were found to be in the bottom 50% on EU member states in terms of web accessibility.</p>	<p>not categorised by disability type and therefore web developers and managers are largely unable to design to only those guidelines required to make electronic communication accessible to people with a vision impairments to whom adaptive technology is available. Therefore there will be no additional costs associated with requiring electronic communication is made accessible for all people with disabilities as opposed to accessible for people with a vision impairment only.</p>
29. Access to heritage sites		
30. Codes of practice		
31. Sectoral plans	<p>Sectoral Plan Departments</p> <p>Since the recent Cabinet Reshuffle, the departmental functions envisaged in the Disability Act and set out in this section on sectoral plans have changed significantly.</p> <p>For this reason, and due to the need to amend the legislative definition of ‘the Minister’ as outlined above in section 2, it is worth considering extending the obligation to create sectoral plans to all government departments. This would ensure that operational problems resulting from future cabinet reshuffles do not arise. In the UK, all 11 Secretaries of State have produced progress reports on disability equality within their remit, and identifying gaps where further action is necessary.</p> <p>Another approach could be to require all public bodies to create sectoral plans which set out how they will facilitate the inclusion of people with disabilities</p>	<p>Sectoral Plan Departments</p> <p>For example, certain functions of FÁS will be moving to the newly named Department of Education and Skills and the Department of Social Protection, respectively. The Department of Education does not currently have a sectoral plan and so it is unclear how current reporting commitments included in the Department of Enterprise, Trade and Employment related to FÁS continue to be monitored in future sectoral plans.</p> <p>The Department of Education did not have to produce a Sectoral Plan according to the Disability Act as it was felt that implementation of the EPSEN Act would cover all of the department’s core obligations in respect of people with disabilities. However, since the commencement of the EPSEN Act has now been deferred, the need for a Sectoral Plan from the Department of Education is even more pressing.</p>

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	<p>in their work. This approach has in fact been undertaken in England and Wales where all public bodies have a legislative obligation under the Disability Equality Duty to produce a Disability Equality Scheme in consultation with people with disabilities and a subsequent Action Plan setting out objectives to be achieved.</p> <p>The British Disability Rights Commission produced a toolkit on the Disability Equality Duty which helps people with disabilities to request a copy of the relevant Disability Equality Scheme, or query why their input in developing the scheme was not reflected in the organisation's Action Plan. This has helped people with disabilities to become more aware of and connected to the various Action Plans – whereas in Ireland, general awareness of sectoral plans among people with disabilities at grassroots level is relatively low. The Action Plans must be revised and rewritten every 3 years – which again allows people with disabilities to participate and shape the future direction of public authorities' Action Plans.</p> <p>Sectoral Plan Reviews and Progress Reports</p> <p>It is clear from the parliamentary debates on the Disability Bill 2004 and broader discussions within the disability sector at the time, that Sectoral Plans prepared under the Act were designed to be a dynamic process of planning and implementing reform. Indeed, Ireland was unique at the time in</p>	<p>Sectoral Plan Reviews and Progress Reports</p> <p>Some confusion has arisen as to whether section 31 required Sectoral Plan Departments to review and revise their Sectoral Plans after a 3 year period or merely to produce a progress report for that period. Following legal advice, the approach taken was to require only progress reports to be completed – as</p>

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	<p>placing legislative obligations on government departments to undertake this type of disability planning.</p> <p>However, the current process of sectoral plan development appears to have stalled since departments have published their progress reports but no new Sectoral Plans have been produced. This leads to stagnation in the reporting and monitoring processes – as departments are only reporting on completion of activities outlined in their original sectoral plan. Pressing issues of current importance which were not included in the original sectoral plans are therefore excluded from this process. The recent transfer of functions has also complicated matters in this regard; however, the Disability Act clearly intended that new Sectoral Plans would be developed (in consultation with people with disabilities) and if this task is not completed the operational value of Sectoral Plans will be diminished.</p> <p>Some critics have suggested that the system of placing each new Sectoral Plan before the Oireachtas and requiring a parliamentary resolution to be passed prior to its entry into force is too onerous – particularly if new sectoral plans are produced on a regular basis. However, for the sake of transparency and accountability it could be important to ensure that the provisions of new Sectoral Plans are subject to debate, and this may help to ensure that the requirement to consult with people with disabilities in developing new plans is fulfilled.</p>	<p>specified in section 31(4)(d). However, it should be noted that section 31(3) also allows for new plans to be prepared to replace previous Sectoral Plans. Departments should be encourage to develop new plans – especially where new issues of national importance have emerged (e.g. in relation to congregated settings, standards for residential services, educational assessments and support, etc.)</p>

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<p>32. Sectoral plan of Minister for Health and Children</p>	<p>Since the HSE plays such a significant role in fulfilling the obligations set out in this Sectoral Plan, it will be important for future plans to clarify the reporting requirements which the HSE must fulfill in order to achieve the plan's objectives. Clear lines of reporting and consistent methods of information and data collection at local, regional and national levels within the HSE will help to prevent further operational difficulties.</p> <p>Key commitments in the original plan which have not been fulfilled include the HSE's accessibility audit of public buildings, the development of more accessible client communication strategies and the HSE's development of guidelines to improve the accessibility of health services for people with disabilities in Ireland. Physical accessibility issues were highlighted by the Report of the Commission on the Status of People with Disabilities in 1996 as causing problems for people with disabilities in accessing basic public health services in their local communities – resulting in poorer levels of general health among people with disabilities than in the general population.</p> <p>In respect of communication strategies, the department's 3 year progress report states that the current strategy is to telephone clients once a complaint is received to talk them through the complaints process. While this may be useful for some people with disabilities, it is clearly not</p>	

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	<p>adequate for members of the deaf community and further development of communication strategies is urgently needed in this regard.</p> <p>New protocols may also need to be drawn up and agreed with different government departments due to the transfer of functions in the recent Cabinet reshuffle.</p>	
33. Sectoral plan of Minister for Social and Family Affairs	<p>The reporting and monitoring process in place in this department's sectoral plan is a good example of what the sectoral plan process should achieve. Aims and objectives are well-linked to the Department's Statement of Strategy and Business Plan and are also connected to the high level goals for people with disabilities in Towards 2016 and to the National Action Plan for Social Inclusion.</p> <p>However, two key challenges remain – the commencement of the Personal Advocacy Service for people with disabilities and the introduction of the National Carer's Strategy. As the department evolves into its new role of Social Protection, it will be important to retain the ethos of social inclusion and the view of people with disabilities as key customers of the department which has informed the current Sectoral Plan.</p>	
34. Sectoral plan of Minister for Transport	<p>This department appears to have produced a new edition of its sectoral plan in 2008 – which is provided for under section 31 as discussed above. The progress report produced in 2009 outlines that further review of the 2008 edition will take place in 3 year periods – aligned with other sectoral plan</p>	

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	<p>departments. It is encouraging that the 2008 edition has aligned the sectoral plan's targets with those set out in Transport 21 and that all targets are set for completion by 2015.</p> <p>Significant achievements have been made through coordination with the Department of Environment, especially in relation to accessible buses and accessible bus stops – although further progress must be sustained in this area through the continuation of cooperation.</p> <p>The definition of passenger transport services set out in section 34(a) includes taxi and hackney services as these are licensed and regulated by a public body. The 2008 edition of the sectoral plan highlights that the Commissioner for Taxi Regulation has introduced new accessibility standards for taxis and that cooperation is ongoing with the department to increase the numbers of wheelchair accessible taxis available nationally. However, more specific targets and indicators are needed to ensure the smooth operation of this aspect of the department's sectoral plan.</p>	
35. Sectoral plan of Minister for Communications, Marine and Natural Resources	The change in responsibility for 'marine' from the Department of Communications to the Department of Agriculture caused operational difficulties in the reporting and monitoring process set out in this Sectoral Plan. Some options for reducing the impact of these difficulties in future are set out in section 31 above.	
36. Sectoral plan of Minister for	Local authorities	

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<p>the Environment, Heritage and Local Government</p>	<p>Information gathering systems to collect data from local authorities should be more fully incorporated into the reporting and monitoring structures in place in the Sectoral Plan. Some improvements are underway with the development of service indicators by the Local Government Management Services Board – however, this needs to be coordinated with objectives at national level.</p> <p>Housing</p> <p>The Housing Strategy for People with Disabilities has yet to be completed although the progress report envisaged that this would occur early in 2010. This was a key commitment of the original Sectoral Plan which remains to be fulfilled.</p>	
<p>37. Sectoral plan of Minister for Enterprise, Trade and Employment</p>	<p>FÁS</p> <p>Many of the actions in this Sectoral Plan concern the activities of FÁS. However, since this organisation is now moving from this department, significant review and revision of its Sectoral Plan will be required. See section 31 above for further discussion.</p> <p>Comprehensive Employment Strategy</p> <p>This was a key commitment in the original Sectoral Plan and its introduction has been subject to significant delay. The policy context of the strategy was set out in the department’s sectoral plan progress report and an outline of the strategy is expected to be</p>	

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	<p>published in the coming months. However, progress in publishing the strategy is extremely slow, given that the need for such a strategy was identified as early as 1996 by the Commission on the Status of People with Disabilities.</p> <p>Sheltered Workshops</p> <p>The department's progress report noted that a Comprehensive Employment Strategy should cover all aspects of employment, including employment in sheltered enterprises. Further clarity is required on the legal position of employees in sheltered workshops and the safeguards necessary to protect their rights.</p>	
38. Complaints		
39. Inquiry officers		
40. Application of Ombudsman Act 1980		
<p>Part 5 Public Service Employment</p>		
46. Interpretation (<i>Part 5</i>)		
47. Employment in public services	<p>Although the quota introduced in this section can be useful in increasing the numbers of people with disabilities employed in the open labour market, there is a need for the Act to reflect that the quota is not an end in itself but should leads to better supports for people with disabilities in employment in general.</p>	
48. Monitoring of compliance with this Part	<p>The latest report on compliance produced in 2008 demonstrated that for the first time since the quota was introduced, all 15 government departments had</p>	<p>The NDA has been monitoring compliance with the 3% quota and has highlighted some intitial problems in</p>

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	<p>achieved or exceeded the target. While this is a significant achievement, it should be noted that the more restrictive definition of disability used for the quota was designed to ensure the inclusion of people with more significant disabilities in public service employment. Therefore, a breakdown of public service employment by disability type might be more useful in measuring the success of the quota.</p>	<p>terms of the reliability of information received. However, it has produced a number of tools for public bodies which allow for systematic measurement, although it cannot require public bodies to use these in their reporting under Part 5.</p>
<p>49. Action to achieve compliance with this Part</p>	<p>This section specifies that NDA has power to (in consultation with the Minister) require a body which is non-compliant for 2 years to take steps to correct this. However, this does not appear to have occurred to date, although the NDA has noted in its most recent report (2008) that there is a small number of bodies which have the capacity to comply with Part 5 but are not currently doing so. The report states that the NDA is seeking further information from certain public bodies to determine levels of compliance. However, more stringent actions are clearly envisaged in this section and may need to be undertaken to ensure greater levels of compliance.</p>	
<p>50. Codes of practice in respect of employment in public service</p>		
<p>51. Positive action measures</p>	<p>Quotas are usually justified as short-term measures and can be useful in highlighting structural improvements which need to be made in employment policy and practice generally. However, it is unclear whether sufficient improvements have been made in this regard as a result of the quota – for example, since the Comprehensive Employment Strategy for People with Disabilities still remains to be published.</p>	

Review of the Operation of the Disability Act 2005

SECTION	COMMENT ON SPECIFIC OPERATIONAL ISSUE	REASON FOR COMMENT
Part 6		
Centre for Excellence in Universal Design		
52. Amendment of Act of 1999		
Part 7		
Miscellaneous		
53. Amendment of section 19 of Broadcasting Act 2001		
54. Offences by bodies corporate etc.		
55. Offences		
56. Further amendment of Act of 1999		
57. Repeal of sections 17 and 18 of Equal Status Act 2000		
58. Exclusions		
Schedule		
Appeals Officer		