

Policy Statement on Socio-Economic Status as a ground of discrimination under the Equality Acts

Irish Human Rights and Equality Commission
April 2024



Published by the Irish Human Rights and Equality Commission.

Copyright © Irish Human Rights and Equality Commission 2024

The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

Contents

Recommendations	1
Abbreviations	2
Introduction	3
Arguments for the introduction of the ground	18
Arguments against the introduction of a ground and rebuttal	21
The Definition.....	24

Recommendations

The Commission reaffirms its position that Irish equality law should be amended to prohibit discrimination on the basis of socio-economic status.

The Commission recommends that:

- an asymmetric approach is applied in defining the new socio-economic status ground.
- indicators are included within the definition of the ground.
- thorough research, including consultation with minoritised groups, is carried out by the State to determine the most effective indicators.
- the provision 'other than on a temporary basis' is removed from the definition of socio-economic disadvantage in the 2021 Bill.
- the provision 'socially or geographically identifiable group' is removed from the definition of socio-economic disadvantage in the 2021 Bill.
- further consideration is given to the rationale for the comparisons between persons of different socio-economic status in sections 3, 4 and 8 of the 2021 Bill.

Abbreviations

CRPD	United Nations Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
RESC	Revised European Social Charter
ECSR	European Committee of Social Rights
The Charter	Charter of Fundamental Rights of the European Union
WRC	Workplace Relations Commission
ESA	Equal Status Acts 2000-2018
EEA	Employment Equality Acts 1998-2021
PSD	Public Sector Equality and Human Rights Duty
The 2017 Bill	Equality (Miscellaneous Provisions) Bill 2017
The 2021 Bill	Equality (Miscellaneous Provisions) Bill 2021

Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national equality body and national human rights institution for Ireland, established under the Irish Human Rights and Equality Commission Act 2014. We are also the Independent National Rapporteur on the Trafficking of Human Beings¹; and the Independent Monitoring Mechanism for Ireland under the United Nations Convention on the Rights of Persons with Disabilities ('CRPD')². In accordance with our founding legislation, we are mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality³ and to examine any legislative proposal and report its views on any implications for human rights or equality.⁴ In our Strategy Statement 2022-2024⁵, we have prioritised economic equality; access to justice; respect and recognition, promoting the eradication of racism, ableism, ageism and sexism through public understanding and State action; futureproofing; and encouraging, reporting on and enforcing the compliance of public bodies with the Public Sector Equality and Human Rights Duty. Advancing economic equality involves challenging and changing policies and laws that exacerbate income and wealth inequalities, including promoting the introduction of a new socioeconomic status ground in equality legislation,⁶ to build an inclusive Ireland, in which equality and human rights are respected.

After the crisis of the Covid-19 pandemic, and as we turn to face new challenges, there is an opportunity to ensure that Ireland's future is built on a firm foundation of commitment to human rights and equality. We must not only address crises as they arrive, but use them as an opportunity to futureproof our rights and commitments, to ensure that future crises are responded to in a way that respects these values.⁷ For more than two decades, there have been calls in Ireland for the inclusion of socio-economic status as a ground of discrimination in the

¹ The Commission's designation was provided for by S.I. No. 432/2020 - European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020.

² Section 103 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022 amends section 10(2) of the Irish Human Rights and Equality Act 2014 to provide that one of our functions is to promote and monitor the implementation in the State of the CRPD.

³ Section 10(2)b of the Irish Human Rights and Equality Commission Act 2014.

⁴ Section 10(2)(c) of the Irish Human Rights and Equality Commission Act 2014.

⁵ IHREC, Strategy Statement 2022-2024 (2022)

⁶ IHREC, Strategy Statement 2022-2024 (2022) at p.11.

⁷ IHREC, The Incorporation of Economic, Social and Cultural Rights into the Irish Constitution (2023)

Equality Acts (Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015).⁸ Poverty and social exclusion create barriers to equal opportunities.⁹ Such a ground would recognise that those with a disadvantaged socio-economic status do face discrimination on this basis and are, therefore, often excluded from both services and employment which, in turn, exacerbates income and wealth inequalities.¹⁰ A lack of economic equality affects all marginalised groups and prevents the realisation of many fundamental rights.¹¹ We are of the view that reducing this gap is crucial for social cohesion, social inclusion and improving the quality of life for those experiencing or at risk of poverty.¹² Not only is there a myriad of international treaty obligations¹³ that require Ireland to provide protection against discrimination on grounds relating to socio-economic status, it is a matter of justice that this ground be incorporated into Irish legislation. The introduction of this ground would not only strengthen the effectiveness of the Equality Acts, but would constitute a crucial shift in the equality landscape in Ireland. Prohibiting socio-economic discrimination would be a fulfilment of the objectives underpinning the Equality Acts and furthermore, would be a significant step towards greater recognition of intersectional discrimination.¹⁴ The incorporation of this ground provides Ireland with the opportunity to further protect and advance equality legislation; and would become a powerful tool in tackling the discrimination encountered by structurally vulnerable groups.¹⁵ Pervasive discrimination and

⁸ S. Kilcommins, E. McClean, M. McDonagh, S. Mullally and D. Whelan (2004) "Extending the Scope of the Employment Equality Legislation: Comparative Perspectives on the Prohibited Grounds of Discrimination", Department of Justice, Equality and Law Reform. This Report was commissioned as a response to the submission of the Equality Authority to the Employment Equality Act Review (2001).

⁹ Fredman notes that social exclusion arises from a variety of causes which are partly material, but also relate to other issues such as living in a deprived area, suffering partnership breakdown, being a member of an ethnic minority, elderly or disabled, highlighting that it is not *just* a temporary phase of poverty; but rather it is systemic, often passed from generation to generation and can be self-perpetuating. See Fredman, *Positive duties and socio-economic disadvantage: bringing disadvantage onto the Equality Agenda* (2010) at p. 13.

¹⁰ See analysis of Paul McKeon provided during the FLAC Equal Status Check Seminar (June 2021); ATD Ireland, *Does it only happen to me? Living in the shadows of socio-economic discrimination* (2019).

¹¹ IHREC, *Strategy Statement 2022-2024* (2022)

¹² IHREC, *Strategy Statement 2022-2024* (2022)

¹³ European Convention on Human Rights, art. 14: 'social origin' 'property' 'other status'; European Social Charter, art. E: 'social origin' and art. 30: right to protection against poverty and social exclusion; European Charter of Fundamental Rights, art. 21: 'social origin' 'property'; ICESCR, art. 2.2: 'social origin' 'property' 'other status'; and ICCPR, art. 26: 'social origin' 'property' 'other statuses'.

¹⁴ IHREC, *Review of the Equality Acts* (2021) at p. 21; see also IHREC, *Submission to the Committee on Economic, Social and Cultural Rights on Ireland's fourth periodic report* (2024) p. 45.

¹⁵ We define a structurally vulnerable group as one who is particularly vulnerable to violations of their rights due to political, economic, social and cultural structures. Instead of focusing on the personal characteristics of individuals and groups and viewing them as lacking agency, 'structural vulnerability' refers to the structures in place, which render certain sectors of the population particularly vulnerable to inequality and human rights abuses. See: Irish Human Rights and Equality Commission, *Submission to the Department of Social Protection's public consultation on the Roadmap for Social Inclusion: Mid-Term Review*, (October 2022), p.7.

socio-economic inequality continue to undermine the development of an Irish society that provides each person with a fair and equal opportunity to participate in economic, political, social and cultural life. The State must address the structural and institutional arrangements, practices, policies and cultural norms which have the effect of discriminating against individuals or groups, and acknowledge the intersectionality between diverse identities.¹⁶

In the 2020 Programme for Government, there was a commitment given to examine the introduction of a new ground of discrimination, based on socio-economic status, into the Equality Acts.¹⁷ In July 2021, the Minister for Children, Equality, Disability, Integration and Youth, Mr. Roderic O’Gorman, T.D., launched a consultation seeking the public’s view on the review of the Equality Acts. The aim of the review was to examine the operation of the Acts. Views were sought on the scope of the current definitions of the nine equality grounds, and whether new grounds should be added such as the ground of socio-economic status discrimination. While the report on the 2021 public consultation was recently published,¹⁸ there are ongoing delays in bringing forward legislative proposals and no concrete timeline for reform has been announced to date.¹⁹ However, in response to a Parliamentary Question in February 2024, Minister O’Gorman stated that it is planned that legislative proposals arising from the Review will be brought forward in the coming months.²⁰ The finalisation of this review must be prioritised within the lifetime of the current Government.²¹

The Government has also referred to this legislative reform at both European and UN levels. In Ireland’s 19th National Report to the European Committee of Social Rights on the implementation

¹⁶ IHREC, Submission to the Committee on Economic, Social and Cultural Rights on Ireland’s fourth periodic report (2024) p. 44.

¹⁷ Programme for Government (2020) p. 77 (available at: <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>)

¹⁸ Department of Children, Equality, Disability, Integration and Youth, [Minister O’Gorman publishes report on the submissions to the public consultation on the Review of the Equality Acts](#) (2023).

¹⁹ Department of Children, Equality, Disability, Integration and Youth, Equality Issues (July 2023).

²⁰ On 15 February 2024, when questioned about an update on the progress of the Equality (Miscellaneous Provisions) Bill 2021, Minister O’Gorman stated that work is currently underway on legislative proposals for reform of the equality acts. Careful work is needed on the process of developing definitions of terms such as "socioeconomic status" or "disadvantaged socioeconomic status" which would have the degree of clarity and lack of ambiguity that is necessary for the Statute Book. [Minister for CEDiy, Roderic O’Gorman, Dáil Debate: Legislative Measures \(308\) \(15 February 2024\)](#).

²¹ As set out in Section 10 of the Electoral Act 1963, Dáil Éireann cannot continue without dissolution for longer than 5 years since the date of its first meeting. This leaves the latest date for the next general election, under Irish law, at March 2025. Dáil Éireann may be dissolved sooner, however, if the Taoiseach makes a request to the President of Ireland. This may arise where the Taoiseach and Government lose a vote of no confidence. See Citizens Information, [General elections](#).

of the revised European Social Charter, the Government reiterated this commitment to examine the introduction of a new ground of discrimination based on socio-economic status.²² At Ireland's recent examination by the UN Human Rights Committee, Minister O'Gorman also asserted that the State intended to introduce two new protected grounds of discrimination within domestic equality legislation, one of which was a ground based on socio-economic status.²³

In this statement, we set out a summary of our position that a new ground relating to socio-economic discrimination should be included within the Equality Acts. The experience of socio-economic discrimination covers, in particular, the fields of employment, education, housing and accommodation and health.²⁴ The next generation of the Equality Acts needs to combine legislative change with broader policy measures to tackle underlying systemic and structural socio-economic discrimination, as well as ensuring access to justice and awareness of rights are prioritised.

Socio-Economic Discrimination

Twenty years have passed since the initial report ('the 2004 Report'), commissioned by the Department of Justice, into the equality legislation in Ireland, in which the need to introduce new discriminatory grounds, including the ground of socio-economic status was examined.²⁵ The 2004 Report found:

“well documented evidence of links between poverty and discrimination”

and that a socio-economic status ground:

“would serve the objectives underpinning equality legislation and enable a more sophisticated intersectional approach”.

²² European Social Charter, Ireland's 19th National Report on the Implementation of the European Social Charter (February 2022) p. 114 (available at: <https://rm.coe.int/rap-rcha-irl-19-2022/1680a58821>)

²³ The other was a ground based on gender identity. See: In Dialogue with Ireland, Experts of the Human Rights Committee Praise Legislation Combatting Hate Crimes, Raise Issues Concerning Rights Abuses at Institutions (available at: <https://www.ohchr.org/en/press-releases/2022/07/dialogue-ireland-experts-human-rights-committee-praise-legislation>)

²⁴ See Tomas Kádár (2016) An Analysis of the Introduction of socio-economic status as a discrimination ground, Equality & Rights Alliance at Foreword by Niall Crowley. See also IHREC, Submission to the Committee on Economic, Social and Cultural Rights on Ireland's fourth periodic report (2024) p. 45.

²⁵ S. Kilcommins, E. McClean, M. McDonagh, S. Mullally and D. Whelan (2004) “Extending the Scope of the Employment Equality Legislation: Comparative Perspectives on the Prohibited Grounds of Discrimination”, Department of Justice, Equality and Law Reform. This Report was commissioned as a response to the submission of the Equality Authority to the Employment Equality Act Review (2001).

We have repeatedly stated our position that the list of discriminatory grounds should be extended to include a ground which addresses socio-economic discrimination.²⁶ Despite the growing recognition of this type of discrimination, the legislature has yet to introduce this new ground. Indeed, whilst the Irish equality legislation was both novel and impressive when first enacted nearly a quarter of a century ago, there have been no new grounds added to the legislation since then, aside from the housing assistance ground. In fact, arguably Irish equality legislation has ‘lost its teeth’ and persons are using both the EU equal treatment and non-discrimination Directives²⁷ and case-law of the Court of Justice of the European Union to bring, and/or defend cases.²⁸ In its recent Concluding Observations, the UN Committee on Economic, Social and Cultural Rights noted the continued absence of comprehensive anti-discrimination legislation in Ireland. They recommended that the State adopt comprehensive anti-discrimination legislation which should include explicit references to all prohibited grounds of discrimination, including socioeconomic status.²⁹

The wider context within which the Government is undertaking its review of the Equality Acts should be acknowledged. Intersecting emergencies and crises – including housing and homelessness, extreme poverty, income and wealth inequalities, and climate impacts violate

²⁶ Equality Authority, Overview of the Employment Equality Act 1998 and the Equal Status Act 2000 (2003) 66-71; Irish Human Rights Commission, Submission on Extending the Scope of Employment Equality Legislation (2005) 4-6; IHREC, Ireland and the International Covenant on Economic, Social and Cultural Rights (2015) 22-23; IHREC, Submission to the UN Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports (2017) 33-34; IHREC, Challenging Employment Discrimination Directly Can Boost Disadvantaged Areas Such as Dublin Inner City (press release, 17 February 2017); IHREC, Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland’s Combined 5th to 9th Report (2019) 17-18; IHREC, Observations on the Equality (Miscellaneous Provisions) Bill 2017 (2017); IHREC, Submission to the Citizens’ Assembly on Gender Equality (2020) 27-28; and IHREC, Comments on Ireland’s 15th National Report on the Implementation of the European Social Charter (2018) 4-6; IHREC, Submission to the Review of the Equality Acts (December 2021) at p. 16; IHREC, [Submission on the Review of the Equality Acts \(2023\)](#) p. 50 and IHREC, Submission to the Committee on Economic, Social and Cultural Rights on Ireland’s fourth periodic report (2024) p. 45.

²⁷ The Equal Treatment Directive (2006/54/EC); The Racial Equality Directive (2000/43/EC); The Employment Equality Directive (2000/78/EC)

²⁸ IHREC, [Submission on the Review of the Equality Acts \(2023\)](#) p. 49. In recognition of the significant opportunity to reform the equality code, we established an ‘Advisory Committee on the Future of Equality Legislation’ (‘the FELAC’). The FELAC brought relevant legal and civil society experts together with Commission members to assist the Commission in identifying and examining the key issues that must be addressed to build a more comprehensive and effective framework of equality legislation and to support equality infrastructure. We also sought advice from our Disability Advisory Committee (‘DAC’) on the definition of disability in the Equality Acts and other relevant issues to the Review.

²⁹ UN Committee on Economic, Social and Cultural Rights (2024) [Concluding observations on the fourth periodic report of Ireland](#) E/C.12/IRL/CO/4 paras 22-23.

economic, social and cultural rights in Ireland.³⁰ The ongoing cost of living crisis means that many households are struggling financially on a daily basis across Irish society.³¹ There is an intrinsic link between poverty, social exclusion and discrimination.³² This has resulted in a demand for remedies against discrimination based on socio-economic status of individuals.

There is an increasing number of studies showing that discrimination on the grounds of socio-economic status is widespread and needs to be tackled,³³ with research finding socio-economic discrimination is a reality in Ireland,³⁴ in accessing public amenities, in employment;³⁵ and that a person's socio-economic status has a significant impact on both their exposure to discrimination and their response to it.³⁶ Research has also shown there is a lack of comprehensiveness in the coverage of our equality legislation.³⁷ Our Your Rights helpline has received complaints of socio-economic discrimination in the areas of education, employment, and advertising, and in service provision areas such as insurance, banking and recreation – although none of these complaints were actionable as socio-economic status is not a protected ground.³⁸ The relationship between

³⁰ IHREC, Submission to the Committee on Economic, Social and Cultural Rights on Ireland's fourth periodic report (2024) p. 10.

³¹ Social Justice Ireland, Policy Focus 2023 (November 2023). The most recent CSO data reveals that 10.1% of the population were at risk of poverty in 2023 – see [Survey on Income and Living Conditions \(SILC\) 2023](#). An individual is defined as being at risk of poverty if their nominal equivalised disposable income is under the at risk of poverty threshold, i.e. 60% of the median nominal equivalised disposable income. See [At Risk of Poverty Indicators Explained](#),

³² T. Kadar, An analysis of the introduction of socio-economic status as a discrimination ground (Equality and Rights Alliance, 2016) p. 20.

³³ S. Atrey, The Intersectional Case of Poverty in Discrimination law, *Human Rights Law Review* 18 (2018): 411-440; T. Kadar, An analysis of the introduction of socio-economic status as a discrimination ground (Equality and Rights Alliance, 2016); J.C. Benito Sánchez, Towering Grenfell: Reflections around Socio-economic Disadvantage in Anti-Discrimination Law, *Queen Mary Human Rights Law Review* 5, no. 2 (2019): 1; A. Benn, The Big Gap in Discrimination Law: Class and the Equality Act 2010, *Oxford Human Rights Hub Journal* 3, no. 1 (2020): 30; S. Ganty, Poverty as Misrecognition: What Role for Antidiscrimination Law in Europe? *Human Rights Law Review* 21, no. 4 (2021): 962–1007; Equinet, *Equality Bodies contributing to the protection, respect and fulfilment of Economic and Social Rights* (2015); See also IHREC, Submission to the Committee on Economic, Social and Cultural Rights on Ireland's fourth periodic report (2024) p. 45.

³⁴ See ATD, *Does it only happen to me? Living in the shadows of socio-economic discrimination* (2019) generally at p. 25 – 43

³⁵ See ATD, *Does it only happen to me? Living in the shadows of socio-economic discrimination* (2019) generally at p. 25 – 43; S. Kilcommins, E. McClean, M. McDonagh, S. Mullally and D. Whelan (2004) "Extending the Scope of the Employment Equality Legislation: Comparative Perspectives on the Prohibited Grounds of Discrimination", Department of Justice, Equality and Law Reform; See also account of lived experience highlighted by Paul McKeon during the FLAC Equal Status Check Seminar (June 2021)

³⁶ F. McGinnity, R. Grotti, O. Kenny and H. Russell, *Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules (IHREC and ESRI)* (2017) 14; see also IHREC, Submission to the Committee on Economic, Social and Cultural Rights on Ireland's fourth periodic report (2024) p. 106

³⁷ According to the Quarterly National Household Survey equality module, 29.6% of those who reported discrimination stated that it was on grounds other than those covered by the current equality legislation (2014).

³⁸ IHREC, Submission on the Review of the Equality Acts (2021) p. 20

discrimination and socio-economic disadvantage is a complex one.³⁹ However, it is clear that discrimination on the grounds of socio-economic status is a reality across most European countries, and yet, when not enshrined as a protected ground, there is no other proxy ground to ensure protection.⁴⁰ As a result of their often precarious situation,⁴¹ those with lower socio-economic status are also subject to:

“stereotyping, prejudice, stigma, and discrimination.”

Socio-economic discrimination is often combined with discrimination on another ground, and it is important that suitable provision is also made for intersectional discrimination to ensure that the socio-economic aspect of discrimination is not lost because it is more effective to pursue a complaint on a single, more established, ground of discrimination.

Ireland is a signatory to a number of international human rights treaties that contain equal protection or non-discrimination guarantees that address inequalities within the state and are addressed to state organs as duty bearers and non-state actors as rightsholders.⁴² However, these norms are generally not designed to capture problems of domestic socio-economic inequality. As such, it is essential that a socio-economic status ground be introduced under the Equality Acts. Discrimination on the basis of socio-economic status leads to and materialises as a barrier to full enjoyment of human rights and particularly economic and social rights.⁴³ Disadvantaged socio-economic status results in a weaker position from which to vindicate one’s human rights.⁴⁴ The inclusion of this proposed ground in national equal treatment legislation would reflect the “need for a comprehensive approach to equality that encompasses all groups that experience inequality and discrimination”⁴⁵ and its purpose would be to cease structural discrimination of persons from a disadvantaged background.

³⁹ Equinet, Expanding the list of Grounds in Non Discrimination Law (2021)

⁴⁰ Equinet, Expanding the list of Grounds in Non Discrimination Law (2021) at iv

⁴¹ According to Equinet, this discrimination is often based on a reliance on social or housing assistance, a lack of education, a neighbourhood, economic vulnerability, appearance etc. See Equinet, Expanding the list of Grounds in Non Discrimination Law (2021) at p. 30; for a comprehensive overview, see the report of the UN Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, “The persistence of poverty: how real equality can break the vicious cycles”, A/76/177 (19 July 2021).

⁴² Tillman Altwicker, Social justice and the judicial interpretation of international social protection law, *Leiden Journal of International Law*, 2022, 35(2).

⁴³ Equal Rights Trust, “Economic and social rights in the courtroom”, London, Equal Rights Trust (2014) at p. 69

⁴⁴ Equinet, Addressing poverty and discrimination: two sides of the one coin (2010) at p. 10

⁴⁵ Equinet, Addressing poverty and discrimination: two sides of the one coin (2010) at p. 101

The Commission reaffirms its position that Irish equality law should be amended to prohibit discrimination on the basis of socio- economic status.

The Legal and Policy Context

While socio-economic status is not currently a protected ground of discrimination, it has been considered in the Irish legal and policy context for over two decades.⁴⁶ References to grounds which address socio-economic discrimination can also be found in a number of regional and international instruments to which the State is a party.

There is evidence from the jurisprudence of the Irish courts that a person’s socio-economic background cannot be the basis for less favourable treatment as a result of the guarantee of equal treatment in Article 40.1 of the Constitution.⁴⁷ However, whilst the courts have on occasion considered matters related to socio-economic status, they have made it clear that the inclusion of socio-economic rights in the Constitution is a matter for the legislature and that it is not a personal right.

In *Redmond v. Minister for the Environment*, it was held that identified classifications that adversely affect the dignity of the individual fall within the remit of the constitutional guarantee.⁴⁸ In *Quinn’s Supermarket v. Attorney General*, ‘social background’ was included in a list of the essential human attributes.⁴⁹ In *NHV v. Minister for Justice*, the Supreme Court considered the right to work for asylum seekers, finding that:

“...a socio-economic right is of quite a different order to personal rights which are explicitly guaranteed by the text [of the Constitution]”.⁵⁰

⁴⁶ The Equality Authority (2002) *Review of Discriminatory Grounds Covered by the Employment Equality Act 1998: An Equality Authority Position* which states existing research suggests that there is a relatively high degree of socio-economic discrimination in the jobs market, citing as an example those who are long-term unemployed at p.5; *Overview of the Employment Equality Act 1998 and the Equal Status Act 2000* (2003) 66-71.

⁴⁷ See *Quinn’s Supermarket Ltd v Attorney General* [1972] IR 1; *K v W (No. 2)* [1990] ILRM 791; *Redmond v Minister for the Environment* [2001] 4 IR 61; *Health Service Executive v OA* [2013] IEHC 172; and *N.H.V. v Minister for Justice and Equality and Ors* [2017] IESC 35.

⁴⁸ [2001] 4 IR 61 at 80 in which Herbert J states: a “law which has the effect, even if totally unintended, of discriminating between human persons on the basis of money is an attack upon the dignity of those persons as human beings who do not have money”. It has been noted that in this judgment was overturned by the Supreme Court but not in relation to this part of the judgment: G.W. Hogan et al., *Kelly: The Irish Constitution*, 5th ed., Bloomsbury Professional at 1775 - 1778.

⁴⁹ [1972] IR 1.

⁵⁰ [2018] 1 IR 146 at para. 13

In *TD v. Minister for Education*, the Supreme Court signalled their opposition to the involvement of the courts in matters of distributive justice, and expressed the “gravest doubts” as to whether it should at any stage assume the function of declaring socio-economic rights to be unenumerated rights guaranteed by Article 40.⁵¹ However, it has been argued that it is both constitutionally and politically legitimate for Irish courts to protect the implied socio-economic rights of marginalised individuals and groups when it is clear that such rights have been egregiously neglected by the political system.⁵²

Article 14 of the European Convention on Human Rights (‘ECHR’) prohibits discrimination in the enjoyment of ECHR rights on the basis of ‘national or social origin, association with a national minority, property, birth or status’ amongst other grounds. The settled jurisprudence of the European Court of Human Rights (‘ECtHR’) leaves a wide margin of appreciation to Member States, with the Court taking the view that national authorities have direct knowledge of their society and its needs, and are therefore better placed to determine what is in the public interest on social or economic grounds.⁵³ However, the phrase ‘other status’ has been given wide interpretation, to include, in certain circumstances, a distinction based on place of residence.⁵⁴ Whilst in *Garib v The Netherlands*, the ECtHR found that a policy imposing minimum income conditions on persons wishing to settle in a number of inner-city areas did not violate the applicant’s liberty of movement and freedom to choose their residence,⁵⁵ in a dissenting opinion, two judges criticised the judgment for not analysing the discrimination aspects of the case,

⁵¹ [2001] 4 IR 259

⁵² Gerry Whyte, *Socio-economic Rights in Ireland: Judicial and Non-Judicial Enforcement*, *Bar Review* 2006, 11(1), 27-31.

⁵³ According to the ECtHR, “because of their direct knowledge of their society and its needs, national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds. The Court will generally respect the legislature’s policy choices unless it is ‘manifestly without reasonable foundation’”. See European Court of Human Rights, *Stec and Others v the United Kingdom*, Applications no. 65731/01 and no 65900/01 (12 April 2006); *J.D. and A. v The United Kingdom*, applications no. 32949/17 and no. 34614/17 (24 October 2019), paras. 77 and 89; *Carson and Others v. the United Kingdom* (Grand Chamber) Application no. 42184/05 (16 March 2010); *Bah v. the United Kingdom*, Application no. 56328/07 (27 September 2011), para. 47; *Hudorovič and others v Slovenia*, applications no. 24816/14 and 25140/14 (10 March 2020) paras 141, 144 and 148; *Fabian v Hungary*, no. 78117/13, § 115.

⁵⁴ See *Carson and others v United Kingdom* (Application No. 42184/05) in which the Court assessed previous case law on the issue and found that place of residence constitutes an aspect of personal status for the purposes of Article 14 [para 70-71]. See also Protocol 12 to the ECHR which extends protection against discrimination to all rights set out in law, and not just those rights protected by ECHR, although this has not yet been ratified by Ireland.

⁵⁵ *Garib v. The Netherlands* (Application no. 43494/09), joint dissenting opinion of Judges López Guerra and Keller at para. 18 and 24. Besides the direct discrimination based on income, they suggested the policy also creates indirect discrimination based on race and gender, since the people most gravely affected by unemployment are immigrants and single mothers.

concluding that the income-based restrictions led to stigmatisation of the poor and that any stereotyping legislation, especially where it involves stigmatisation, is in and of itself problematic.⁵⁶

The Revised European Social Charter ('RESC') lists 'social origin' as a ground of discrimination under Article E. Article 30 also provides for a right to protection against poverty and social exclusion.⁵⁷ In *International Movement ATD Fourth World v. France*, the European Committee of Social Rights ('ECSR') examined issues of eviction and the lack of adequate housing, finding France's housing policy to be insufficient, lacking a coordinated approach to promote the effective access of persons who live or risk living in a situation of extreme poverty to housing. The ECSR found a violation of Article 30 taken alone as well as in conjunction with Article E of the RESC.⁵⁸

The non-discrimination provision of the EU Charter of Fundamental Rights of the European Union ('the Charter') names 'social origin' and 'property' as protected grounds in a non-exhaustive list.⁵⁹

Further, a significant number of European states and Member States have included a number of different grounds relating to socio-economic discrimination in their non-discrimination legislation.⁶⁰ However, it should be highlighted that where socio-economic status is recognised as a protected characteristic, its use varies significantly from one country to another. In some countries, there is a scarce use of this ground and little case law on it, as is the case in Georgia⁶¹,

⁵⁶ In its case-law the ECtHR has stressed the necessity for States to take into account vulnerable and disadvantaged social groups, such as, for example, the Roma population, who may need assistance in order to be able to enjoy effectively the same rights as the majority population (*Hudorovič and Others v. Slovenia*, 2020, § 142). The ECtHR has found States to be in violation of Article 14 for failing to take positive action to avoid the perpetuation of discrimination or discriminative practices against the Roma community (*Horvath and Kiss v Hungary*) and for failing to give due consideration to the specific circumstances of some groups (*Yordanova & Ors v Bulgaria*).

⁵⁷ By introducing Article 30, Council of Europe Member States 'considered that living in a situation of poverty and social exclusion violates the dignity of human beings'. See also: Council of Europe (2016), *The Right to be Protected against Poverty and Social Exclusion under the European Social Charter* at p. 2 (available at: <https://rm.coe.int/16806f597e>).

⁵⁸ *International Movement ATD Fourth World v. France* (Complaint no. 33/2006) at para. 163-174

⁵⁹ Article 21.

⁶⁰ See the European Commission's most recent comparative analysis of non-discrimination law in Europe (2023); Belgium: descent, ethnic or national origin, property, language, social origin; Bulgaria: origin, education, personal or social status, family status, property status; Croatia: language, social origin, property, education, social status; Denmark: social origin; Finland: language, state of health or other personal characteristics; France: physical appearance, place of residence, last name, family situation, economic vulnerability, banking residence; Greece: descent, family or social status; Hungary: family status, social origin, financial status, nature of employment, attribution or condition of a person; Lithuania: language, social status; Portugal: ancestry; Romania: social status, belonging to a disadvantaged group; Slovakia: language, social origin, property; Slovenia: language, social standing, economic situation, education. See European Commission, [A Comparative Analysis of Non-discrimination Law in Europe 2023](#) (22 March 2024) p. 10.

⁶¹ No discrimination on the basis of socio-economic was evoked to the exception of the issue of unpaid

Greece⁶², Czech Republic⁶³, and Serbia.⁶⁴ While in other countries, this ground has been increasingly involved and implemented, such as in Bulgaria⁶⁵, France⁶⁶, and Belgium⁶⁷. Equinet reports and various equality bodies claim that these grounds are:

“increasingly invoked and tested in front of the courts and tribunals and they provide effective protection to groups that otherwise would have few tools and opportunities to fight their social exclusion”.⁶⁸

The International Covenant on Economic, Social and Cultural Rights lists social origin, property, birth or other status among the grounds in non-discrimination protection provided for under Article 2.⁶⁹ Social origin is defined as referring to a person’s inherited social status, linking it also to property status, birth and economic and social status.⁷⁰ Property is seen as a broad concept including real property and personal property, or the lack of it.⁷¹ Birth is seen as covering:

Internships. See Public Defender (Ombudsman) of Georgia, [Special Report of the Public Defender of Georgia On Combating and Preventing Discrimination and the State of Equality](#) (2020) at para. 8.3; See also the Special Report of the Public Defender of Georgia on Combating and Preventing Discrimination and the State of Equality for 2019 and 2018.

⁶² Article 1(1) of Law 4443/2016 prohibits discrimination on grounds of social status but it is rarely invoked.

⁶³ Article 16, Act No. 262/2006 Coll., Labour code; Article 4, Act No. 435/2004 Coll., Act on Employment; Article 2, Act No. 561/2004 Coll., Act on pre-school, basic, secondary, tertiary, professional and other education (the Education Act); Article 18, Act No. 99/1963 Coll., Act on Civil Procedure prohibit discrimination on grounds of social origin and property in education, employment, and judicial process, while the Public Defender of Rights reported socio-economic discrimination mainly occurred in the field of housing.

⁶⁴ Article 18, Serbian Labour Code, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, and the decision of the Constitutional Court with regards to 113/2017 and 95/2018 prohibits discrimination on financial position and income in all fields, but it is mainly reported in the field of housing.

⁶⁵ In 2020, most of the complaints brought before the Commission for Protection against Discrimination (and especially the panel in charge of the grounds of “education, belief, political affiliation, social status, and property status”) were related to education and social status, although rarely successful for the latter. See Commission for Protection against Discrimination (Bulgaria), “Annual Report for the activities of the Commission for Protection against Discrimination for 2020” (2020).

⁶⁶ In 2020, the economic vulnerability ground was the 7th most invoked ground after disability, origin, health, nationality family status and age. See Défenseur des droits (French Ombudsman), Annual Report (2020).

⁶⁷ The ground of wealth is the 4th most frequent ground among cases brought before the Belgian Inter-federal Centre for Equal Opportunities (Unia), after race, disability, and religion (184 complaints were brought on this ground while there were only 76 in 2015). See Belgian Interfederal Center for Equal Opportunities (Unia), Annual Report (2020). Note that the ground of sex/gender is not included in these statistics as there is a separate equality body which deals with issues related to equality between women and men.

⁶⁸ An Analysis of the Introduction of socio-economic status as a discrimination ground at p. 17; See also Equinet, Expanding the List of Non-Discrimination Law (2021) at p. 38 and 52.

⁶⁹ See further, the UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 (2009) confirming the term ‘other status’ may include ‘place of residence’ or ‘economic and social situation’.

⁷⁰ An Analysis of the Introduction of socio-economic status as a discrimination ground at p 8

⁷¹ An Analysis of the Introduction of socio-economic status as a discrimination ground at p. 8

“descent and inherited status as well as those born out of wedlock”.⁷²

The UN Committee on Economic, Social and Cultural Rights adopted its General Comment No. 20 in May 2009, on non-discrimination in economic, social and cultural rights.⁷³ The Comment lists a number of grounds, such as disability, age, health status or sexual orientation under ‘other status’, and states:

“individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person’s social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping which can lead to the refusal of, or unequal access to, the same quality of education and health care as others, as well as the denial of or unequal access to public places.”⁷⁴

In 2015, Ireland was examined by the UN Committee on Economic, Social and Cultural Rights, with regard to its compliance with the provisions of the Covenant. The Committee raised concern regarding Ireland’s equality laws, as they do not provide comprehensive protection against discrimination on all the grounds set out in the Covenant. The Committee recommended that the State align its laws accordingly.⁷⁵ As noted above, in March 2024, the Committee repeated its concern about Ireland’s continued absence of comprehensive anti-discrimination legislation in Ireland. It recommended that the State adopt comprehensive anti-discrimination legislation. This should include explicit references to all prohibited grounds of discrimination, including socioeconomic status; definitions of direct, indirect, intersectional and multiple discrimination; and a prohibition against discrimination in both the public and the private spheres.⁷⁶

The International Covenant on Civil and Political Rights lists ‘national or social origin, property, birth or other status’ among the grounds in non-discrimination protection provided for under

⁷² An Analysis of the Introduction of socio-economic status as a discrimination ground at p. 8

⁷³ Economic and Social Council, [General Comment No. 20](#) on non-discrimination in economic, social and cultural rights. E/C.12/GC/20 2 July 2009

⁷⁴ Economic and Social Council, General Comment No. 20 on non-discrimination in economic, social and cultural rights. E/C.12/GC/20 2 July 2009 at para. 35

⁷⁵ UN Committee on Economic, Social and Cultural Rights (2015) [Concluding observations on the third periodic report of Ireland](#) E/C.12/IRL/CO/3 at para 12

⁷⁶ UN Committee on Economic, Social and Cultural Rights (2024) [Concluding observations on the fourth periodic report of Ireland](#) E/C.12/IRL/CO/4 paras 22-23.

Article 26. The Human Rights Committee found a violation of Article 26 on the grounds of both gender and socio-economic discrimination in *Mellet v Ireland* as the State:

“failed to adequately take into account [Ms. Mellet’s] medical needs and socio-economic circumstances and did not meet the requirements of reasonableness, objectivity and legitimacy of purpose”.⁷⁷

In 2011, the Committee on the Elimination of Discrimination against Women found that Brazil breached its obligations under the Convention on the grounds of sex, descent and socio-economic discrimination as it failed to provide adequate obstetric care to the applicant and adequate civil redress to her family after she died.⁷⁸

At the UN level, the Sustainable Development Goals, adopted in 2015 require all countries to:

“mobilise efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring no one is left behind.”

Goal 1 aims at ending poverty in all its forms everywhere, and it acknowledges that social discrimination and exclusion as well as a lack of participation in decisionmaking are manifestations of poverty. Goal 10 is to reduce inequality within and among countries and its targets include empowering and promoting the social, economic and political inclusion of all, irrespective of, among others, economic or other status; as well as ensuring equal opportunity and reducing inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.⁷⁹

In 2012, the Human Rights Council adopted the UN’s Guiding Principles on extreme poverty and human rights, which highlight that:

“persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another.”⁸⁰

The Principles find that discrimination and exclusion are listed as both a:

⁷⁷ *Mellet v. Ireland* (2016) UN Doc CCPR/C/116/D/2324/2013

⁷⁸ *Alyne da Silva Pimentel v Brazil* (Communication No. 17/2008) CEDAW/C/40D/17/2008. The Committee recognised the applicant belonged to a particularly vulnerable social group.

⁷⁹ United Nations, [Sustainable Development Goals](#)

⁸⁰ UN’s Guiding Principles on Extreme Poverty and Human Rights at p. 2

“major cause and a consequence of poverty”,

and that those living in poverty are:

“subject to discriminatory attitudes and stigmatization from public authorities and private actors”

precisely because of their economic status.⁸¹

The Guiding Principles foresee that all forms of discrimination on grounds associated with poverty must be eliminated and invite States to ensure that persons living in poverty have access to remedies in cases of discrimination on the basis of their socio-economic situation. Magdalena Sepúlveda Carmona, the UN’s Independent Expert on human rights and extreme poverty the impacts of the financial crisis was severe, particularly for the most vulnerable of Irish society.⁸² She called for the removal of the barriers that prevent the most vulnerable accessing their entitlements, and reiterated that Ireland’s human rights obligations apply even during times of economic hardship.

In 1999, Ireland ratified ILO Convention Number 111 (Employment and Occupation) which prohibits discrimination based on national extraction or social origin under Article 1. The ILO’s Committee of Experts on the Application of Conventions published its observations on Ireland in respect of Convention No. 111 in 2014.⁸³ A specific observation is dedicated to discrimination based on political opinion or social origin and the Committee asked the Irish Government to take steps to ensure legislative and practical protection against discrimination based on these grounds.⁸⁴

Therefore, while there is no direct obligation to incorporate this ground into the Equality Acts, there is a comprehensive body of domestic, regional, and international jurisprudence, which provides a strong legal basis supporting the prohibition of discrimination based on a person’s socio-economic background, and the State has been subject to criticism in this area.⁸⁵ The

⁸¹ UN’s Guiding Principles on Extreme Poverty and Human Rights at p. 5

⁸² Human Rights Council, Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona: Mission to Ireland, (2011) A/HRC/17/34/Add.2

⁸³ ILO’s Committee of Experts, [Observation on Ireland](#) (2013)

⁸⁴ ILO’s Committee of Experts, [Observation on Ireland](#) (2013) at Article 1(1)(a).

⁸⁵ See, for example: Human Rights Committee, *Mellet v Ireland* [2013] Communication No. 2324/2013: Regarding a woman who was required to travel to the UK to procure a termination of pregnancy prior to the repeal of the 8th amendment, ‘[t]he Committee considers that the differential treatment to which the author is subjected in relation

inclusion of the prohibition of socio-economic discrimination recognises that discrimination on the basis of socio-economic status is:

“pervasive and operates as a constraint on an individual’s social mobility”.⁸⁶

other similarly situated women failed to adequately take into account her medical needs and socioeconomic circumstances.’

⁸⁶ S. Kilcommins, E. McClean, M. McDonagh, S. Mullally and D. Whelan (2004) “Extending the Scope of the Employment Equality Legislation: Comparative Perspectives on the Prohibited Grounds of Discrimination”, Department of Justice, Equality and Law Reform at p. XI

Arguments for the introduction of the ground

A socio-economic ground would:

“serve the objectives underpinning the adoption of equality legislation, namely the pursuit of a more equal and just society”.⁸⁷

Not only would it provide a practical means to challenge discrimination on this ground, it would provide ‘symbolic’ recognition that such discrimination cannot be tolerated, which may have a ‘knock-on effect’ on the stigma and stereotyping faced by structurally vulnerable individuals.⁸⁸

Socio-economic discrimination is egregious and:

“a form of systemic discrimination that affects a range of areas.”⁸⁹

Explicitly recognising this ground would address cycles of poverty and disadvantage.⁹⁰ Poverty and social exclusion create barriers to equal opportunities,⁹¹ and a socio-economic status ground has the potential to offer some counterbalance by providing protection from discrimination.⁹²

However, discrimination on such a ground often combines with other grounds of discrimination which aggravates the situation and hardship experienced. Litigating such a case without being able to apply a socio-economic lens hides this fact which either weakens the case or runs counter to the purpose of the anti-discrimination law.

The ground would assist in the acceptance of a more sophisticated approach to intersectionality and multiple discrimination.⁹³ Discrimination on the ground of socio-economic status is often combined with discrimination on other grounds, resulting in additional harm and social

⁸⁷ S. Kilcommins, E. McClean, M. McDonagh, S. Mullally and D. Whelan (2004) “Extending the Scope of the Employment Equality Legislation: Comparative Perspectives on the Prohibited Grounds of Discrimination”, Department of Justice, Equality and Law Reform at p. xiii.

⁸⁸ IHREC, [Submission on the Review of the Equality Acts \(2023\)](#) p. 53.

⁸⁹ Including health, education, housing and employment -UN Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, “The persistence of poverty: how real equality can break the vicious cycles” (19 July 2021) para. 54.

⁹⁰ Equinet, *Expanding the List of Grounds in Non-Discrimination Law (2021)* at p. 46

⁹¹ Equinet, *Addressing Poverty and Discrimination: Two Sides of the One Coin (2010)*

⁹² Research shows that people with disadvantaged socio-economic status face clear discrimination where the ‘traditional’ grounds cannot provide protection to them - *An Analysis of the Introduction of socio-economic status as a discrimination ground* at p.20.

⁹³ IHREC, *Submission to the Review of the Equality Acts (2021)* at p. 21; *An Analysis of the Introduction of socio-economic status as a discrimination ground* at p. 20; and *Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of discrimination* at page xiii. See also IHREC, [Submission on the Review of the Equality Acts \(2023\)](#) p. 53.

exclusion.⁹⁴ Ethnic origin, disability, health status, age, family status, citizenship or gender could all be grounds that often intersect with the socio-economic status ground.⁹⁵ In multiple discrimination scenarios socio-economic status can serve as the ground for direct discrimination, resulting in indirect discrimination on the other ground(s). It can also be the ground for indirect discrimination as direct discrimination on other grounds often disproportionately targets and affects persons in a vulnerable socio-economic situation,⁹⁶ as

“most legal systems are ill-equipped to deal with multiple and intersectional discrimination, this also means that less cases are taken on the socio-economic status ground, especially if jurisprudence on the other ground(s) is well-established.”⁹⁷

It has been reported that poverty acts as a barrier to reporting discrimination, which highlights the significance of the socio-economic ground as it would create a ‘safe space’ for those living in poverty within equality bodies.⁹⁸

The ground is not novel as prohibition of discrimination based on a person’s socio-economic status has already been established in Irish equality legislation, albeit in a limited manner. The housing assistance ground under the ESA protects those in receipt of rent supplement, housing assistance or any social welfare payment from discrimination in the provision of accommodation.⁹⁹ Research conducted on this ground found that those experiencing housing discrimination include those from a lower socio-economic background, among others.¹⁰⁰ This development is important as this ground introduced, for the first time in Ireland, a prohibition of discrimination based on source of income, albeit only in the context of private rental accommodation. The Workplace Relations Commission (‘WRC’) has determined a proportionately high number of complaints on the housing assistance ground and discrimination on this ground has become a prevalent issue in the equality law landscape.¹⁰¹ The WRC case law on this ground has established important overarching principles in regard to the operation of the law and has delivered important results for individuals

⁹⁴ Equinet, *Addressing Poverty and Discrimination: Two Sides of the One Coin* (2010) at p. 9

⁹⁵ Equinet, *Addressing poverty and discrimination: two sides of the one coin* (2010) at p. 10

⁹⁶ *An Analysis of the Introduction of socio-economic status as a discrimination ground* at p. 13

⁹⁷ *An Analysis of the Introduction of socio-economic status as a discrimination ground* at p. 12

⁹⁸ Equinet, *Addressing Poverty and Discrimination: Two Sides of the One Coin* (2010) at p. 10

⁹⁹ Section 3B.

¹⁰⁰ Rory Aherne and Judy Walsh, *Housing Assistance and Discrimination* (2022) at p. 2.

¹⁰¹ From 1 January 2016 to 31 December 2020, the WRC issued decisions in 138 cases on the housing assistance ground. Over the same period, 14 complaints of discrimination concerning private rental accommodation were determined on the nine grounds combined. Rory Aherne and Judy Walsh, *Housing Assistance and Discrimination* (2022) at p. 7.

who have experienced discrimination,¹⁰² thus demonstrating that a ground of this nature can operate effectively in practice.

The ground could be utilised to address structural discrimination, for example, where some groups, such as homeless people or persons where there is a history of long-term unemployment, are faced with great difficulty in accessing employment or vocational training. In this regard, this ground could pave the way for a positive form of discrimination where a group could show intergenerational unemployment. It should also provide a basis for a claim of discrimination under the EEA where Artificial Intelligence ('AI') and algorithms may be used with a formula denying persons from certain social groups. Research suggests AI has the potential to discriminate as there is a risk that the use of some technology will:

“inadvertently make connections based on bias”.¹⁰³

The introduction of this ground would also enhance access to justice for structurally vulnerable individuals and groups as access to the courts for a constitutional action involving socio-economic interests is both costly and time consuming.

This ground would also enhance the Public Sector Equality and Human Rights Duty ('PSD') as provided for in s.42 of the Irish Human Rights and Equality Commission Act 2014, which requires public bodies to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans. Public bodies currently have an ongoing requirement to inform themselves of, and give reasonable consideration to this duty in the performance of their functions. The inclusion of a socio-economic ground in the equality legislation would require public bodies to consider this in complying with their ongoing obligations under the PSD.

Finally, as noted above, Ireland is required under the various international treaties to which it is a party to provide protection against discrimination on grounds related to socio-economic status.¹⁰⁴

¹⁰² Rory Aherne and Judy Walsh, *Housing Assistance and Discrimination* (2022).

¹⁰³ Equinet, *Regulating for an Equal AI: a new role for equality bodies* (2020) at p. 109. In March 2024, the European Parliament approved the EU Artificial Intelligence Act ('AIA'), the first EU regulatory framework for AI, which is expected to come into force in the coming months. See European Parliament, *Artificial Intelligence Act: MEPs adopt landmark law* (Press Release, 13 March 2024).

¹⁰⁴ European Convention on Human Rights, art. 14: 'social origin' 'property' 'other status'; European Social Charter, art. E: 'social origin' and art. 30: right to protection against poverty and social exclusion; European Charter of Fundamental Rights, art. 21: 'social origin' 'property'; ICESCR, art. 2.2: 'social origin' 'property' 'other status'; and

Arguments against the introduction of a ground and rebuttal

It is argued that a socio-economic status ground would be too broad, lack specificity and extend to everyone. However, these arguments can be addressed by devising a definition that is asymmetric which would thus protect only those that suffer discrimination clearly on the basis of their socio-economic status. These same arguments were raised in some jurisdictions in Canada, which proved that definitional problems are surmountable.¹⁰⁵ In our previous recommendations on this matter, we have stated that any difficulties surrounding the introduction of this ground such as ambiguity or complexity could be overcome through the provision of key indicators of social class.¹⁰⁶ Further, we are of the view that any potential ambiguities in the law can, in the same way that the understanding of the other grounds has evolved, be advanced through interpretation by tribunals and the courts.¹⁰⁷

It has also been argued that the introduction of such a ground is a difficult concept to define, and that it would result in courts having an overly wide discretion. However, the same has been said in the past about other grounds and there have not been fundamental difficulties.¹⁰⁸ Arguably, the courts are well equipped to deal with the concept of socio-economic status, provided that the ground is adequately defined and allows for situation-specific analysis.

Further, it has been proposed that socio-economic status is not immutable; however, the generational effect of socio-economic status means it is significantly more immutable than opponents would suggest.¹⁰⁹ This argument does not hold in jurisdictions operating an open list of grounds and/or naming grounds that are typically not seen as immutable.¹¹⁰

It is also argued that this is a policy issue. However this reinforces the charity-based model approach to poverty and social exclusion¹¹¹ which has been proven to be an inadequate response

ICCPR, art. 26: 'social origin' 'property' 'other statuses. See generally *An Analysis of the Introduction of socio-economic status as a discrimination ground*

¹⁰⁵ *Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of discrimination* (2004) at p. xiii

¹⁰⁶ IHREC, *Submission to the Review of the Equality Acts* (2021) at p. 19-21

¹⁰⁷ IHRC, *Extending the Scope of Employment Equality Legislation* (2005) p 6.

¹⁰⁸ This has been raised against some 'traditional' grounds of discrimination, such as age and disability. See *An Analysis of the Introduction of socio-economic status as a discrimination ground* at p. 19.

¹⁰⁹ *Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of discrimination* (2004)

¹¹⁰ See Article 8.r. of the Hungarian Act on equal treatment and the promotion of equal opportunities in relation to, for example, part time nature of employment; and Department of Justice, Equality and Law Reform Report (2004)

¹¹¹ *An Analysis of the Introduction of socio-economic status as a discrimination ground* at p. 19

to economic crises and ignores the principled need for a rights-based approach.¹¹² Further, policy and law are not mutually exclusive, both are necessary to respond appropriately and adequately to the issue.

Some stakeholders may argue that considerable resources are already allocated to persons facing socio-economic disadvantage, in education for example. However, people living in poverty and those on low incomes are a particularly structurally vulnerable group whose access to rights and justice generally is often limited because of their limited economic means, as well as social exclusion and discrimination, it is imperative that resources are spent on the introduction and operationalisation of this ground to go some way to redressing the balance.¹¹³

Some stakeholders may argue that race is already covered under the Acts so wider issues of race and/or nationality are not relevant within this proposed new ground. This fails to recognise that discrimination on an individual's socio-economic status is often combined with other grounds of discrimination, and that discrimination affects persons with low incomes incrementally more.¹¹⁴ In many instances, those who are discriminated against because of their socio-economic status, are also concurrently discriminated against on another ground(s).¹¹⁵ Multiple discrimination aggravates the situation of certain groups and can result in certain situations or disadvantages not being fully understood or appropriately responded to without taking socio-economic discrimination into account. Litigating a case on any other ground necessarily hides the socio-economic nature of the discrimination.

Some stakeholders may flag the potential for a significant increase in spurious claims and that there is simply no need for this ground. However, the call for the protection of these rights, arises:

“directly from the failure of the political system to respond effectively to groups that are economically, socially, and therefore, politically marginalised”.¹¹⁶

¹¹² An Analysis of the Introduction of socio-economic status as a discrimination ground at p. 19

¹¹³ It has been reported that socio-economic status plays a significant role in students' outcomes in education. The ground would have the potential to offer some counterbalance by providing some protection against discrimination based on such status by improving the equity in education to level the playing field among students of different socio-economic status. OECD, *Equity in Education, Breaking Down Barriers to Social Mobility* at p. 54-55

¹¹⁴ Equinet, *Expanding the List of Grounds in Non Discrimination Law (2021)* at p. 48

¹¹⁵ Equinet, *Expanding the List of Grounds in Non Discrimination Law (2021)* at p. 48

¹¹⁶ Gerry Whyte, *Socio-economic Rights in Ireland: Judicial and Non-Judicial Enforcement*, *Bar Review* 2006, 11(1), 27-31.

The experience to date in relation to the housing assistance ground does not support the contention that the introduction of a socio-economic status ground would result in a marked increase in spurious claims, where:

“research suggests that for those who pursue action in the WRC and get their complaint heard, the process can be quite positive in terms of complaints being upheld.”¹¹⁷

Finally, some may point to an absence of a requirement in the Directives for such a ground. However, a significant number of European states and Member States have included grounds relating to socio-economic discrimination in their non-discrimination legislation.¹¹⁸ The incorporation of this ground provides Ireland with the opportunity to further protect and advance equality legislation. Whilst there is no direct obligation to incorporate this ground into the Equality Acts, there is a need to tackle socio-economic disadvantage and inequality through structured measures and policies to tackle underlying systemic and structural socio-economic discrimination, and to allow for adequate data collection.

¹¹⁷ Rory Aherne and Judy Walsh, *Housing Assistance and Discrimination* (2022), p.52

¹¹⁸ European network of legal experts in gender equality and non-discrimination, *A comparative analysis of gender equality law in Europe* (2020).

The Definition

Some key elements must be considered to determine an approach to the inclusion of a socio-economic status ground.

Previous attempts to legislate for a socio-economic ground

The Equality (Miscellaneous Provisions) Bill 2017 ('the 2017 Bill'), a private member's bill, which lapsed with the dissolution of the Dáil and the Seanad in January 2020, proposed to amend Irish equality law to prohibit discrimination on the basis of a person's social and economic background. This Bill proposed to insert a new definition of disadvantaged socio-economic status into the respective pieces of equality legislation, and proposed to define 'disadvantaged socio-economic status' as follows:

"Disadvantaged socio-economic status' means a socially identifiable status of social or economic disadvantage resulting from poverty, level or source of income, homelessness, place of residence, or family background".¹¹⁹

A subsequent private member's bill entitled the Equality (Miscellaneous Provisions) Bill 2021¹²⁰ ('the 2021 Bill') also proposed to amend Irish equality law to prohibit discrimination on the basis of a person's social and economic background.

This latter Bill proposed to insert a new definition of disadvantaged socio-economic status into the respective pieces of equality legislation, and proposed to define 'socio-economic disadvantage' as follows:

"Socio-economic disadvantage means having disadvantaged social status or disadvantaged economic status, or both, that may be indicated by a person's inclusion, other than on a temporary basis, in a socially or geographically identifiable group that suffers from such disadvantage resulting from one or more of the following circumstances:

- (a) poverty,
- (b) source of income,
- (c) illiteracy,

¹¹⁹ Section 2, The Equality (Miscellaneous Provisions) Bill 2017.

¹²⁰ The 2021 Bill has been before the Dáil at Second Stage since January 2021.

- (d) level of education,
 - (e) address, type of housing or homelessness,
 - (f) employment status,
 - (g) social or regional accent,
- or from any other similar circumstance”

The spirit of this proposed definition in the 2021 Bill is welcome, as it would provide inclusive, open ended, asymmetric protection, and is more expansive than similar definitions in other jurisdictions.¹²¹

An asymmetric approach¹²² limits the application of this ground to only those who are disadvantaged. We recognise the need to achieve sufficient clarity and precision in defining the ground in order to secure foreseeability and transparency, which is required in the law.

There are, however, some key issues with the definition that should be addressed to ensure there is clarity as to the scope of the ground and inclusivity in its application. See further below.

The Commission recommends that an asymmetric approach is applied in defining this new ground.

¹²¹ While expressing reservations about both Bills some commentators believe that the definition provided for in the 2021 Bill is preferable to that provided in the 2017 Bill as it is more workable, more enforceable and it permits intersectionality as between different indicators of socioeconomic disadvantage See analysis of Siobhán Phelan SC (as she was then) provided during the FLAC Equal Status Check Seminar (June 2021); Tamas Kádár, Co-Director of Equinet (the European Network of Equality Bodies) agreed with this analysis (available at: <https://www.youtube.com/watch?v=KawIHWn697w>).

¹²² An asymmetrical ground would prohibit discrimination against only some people on the basis of the protected trait. In relation to a socio-economic status ground, this would mean that only people who are disadvantaged because of their socio-economic status would be protected. In contrast, a symmetric ground would prohibit discrimination against everyone on the basis of their socio-economic status. This would mean, for example, that wealthier people could use the ground to say they were discriminated against. We are of the view that using a symmetrical approach would create too broad a ground and would not address the intended purpose of the Acts or the purpose of including the ground itself.

The 2004 report lists a number of key indicators¹²³ to define socio-economic status.¹²⁴ We are of the view that the definition of socio-economic status is best developed by listing key practical and identifiable features of difference across social classes, and we have previously suggested that these could include family background, geographical location, home ownership, educational background and economic situation.¹²⁵ While the listed indicators do not need to be defined precisely, it would be beneficial if their scope is considered, and where necessary set out in explanatory memorandum. We recommend consideration be given to the inclusion of a non-exhaustive list of objective indicators that reflect the lived experience of those facing socio-economic discrimination.

The Commission recommends that indicators are included within the definition of the ground.

The Commission recommends that thorough research, including consultation with minoritised groups is carried out by the State to determine the most effective indicators.

Specific observations on the 2021 Bill

The inclusion of the provision ‘other than on a temporary basis’ stands to narrow the scope of the ground’s protection. It would also add an additional level of complexity to determining the scope of the ground, as the threshold for what constitutes ‘temporary’ will not be clear and could result in differing judicial interpretations.

The Commission recommends that the provision ‘other than on a temporary basis’ is removed from the definition of socio-economic disadvantage in the 2021 Bill.

The requirement of the complainant to show they are part of a socially or geographically identifiable group is onerous. This would be particularly problematic in Ireland where many

¹²³ In this sense, the term indicators refers to the list of practical and concrete examples, or circumstances of discrimination faced by those experiencing socio-economic disadvantage; previously indicators such as level of education, employment status, and level of literacy have been suggested. Essentially, the indicators will allow someone facing socio-economic discrimination to show how, and that they are, disadvantaged by their socio-economic status. We have previously advised using indicators to combat the argument that this ground would be too broad. See Irish Human Rights Commission (IHRC) *Extending the Scope of the Employment Equality Legislation*, (2005) at p.4-6.

¹²⁴ See *Extending the Scope of Employment Equality Legislation: Comparative Perspectives on the Prohibited grounds of discrimination* (2004) which provides for level of education, level of literacy, homelessness, geographical location, source and level of income.

¹²⁵ IHREC, [Observations on the Equality \(Miscellaneous Bill\) 2017](#) at p.10; Review of Discriminatory Grounds Covered by the Employment Equality Act 1998 at p. 5

complainants are likely to be unrepresented. It is also complex for adjudicators to establish a person's inclusion in a socially or geographically identifiable group.¹²⁶ In addition, some indicators like source of income are not necessarily related to a disadvantaged socially or geographically identifiable group,¹²⁷ and unlike other grounds (such as Race or membership of the Traveller community), people may move in and out of this list of indicators, and may not necessarily be part of an identifiable group.

The Commission recommends that the provision 'socially or geographically identifiable group' is removed from the definition of socio-economic disadvantage in the 2021 Bill.

In sections 3, 4 and 8 of the 2021 Bill, the ground is defined in a way that would enable comparisons between persons of a different socio-economic status. The rationale for this requires clarification.

The Commission recommends that further consideration is given to the rationale for the comparisons between persons of different socio-economic status in sections 3, 4 and 8 of the 2021 Bill.

¹²⁶ The definition proposed in the Bill appears to be based on the definition provided in section 1(1) of the Canadian Northwest Territories Human Rights Act 2002. The main precedent on that ground is *WCB v. Mercer* 2012 NWTSC 57 which gave significant consideration to what is required to establish a person's inclusion in a socially or geographically identifiable group.

¹²⁷ For example, a middle class person with a professional occupation may be in receipt of housing assistance payment.



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

The Irish Human Rights and
Equality Commission
**16 – 22 Sráid na Faiche,
Baile Átha Cliath, D07 CR20**
16 – 22 Green Street,
Dublin, D07 CR20

Íosghlao/Lo-Call 1890 245 245
Guthán/Phone + 353 (0) 1 858 3000
Ríomhphost/Email info@ihrec.ie
Idirlíon/Web www.ihrec.ie
🐦 @_ihrec
📍 /irishhumanrightsequality