



## ***Equality ACTION***

# **Guide to the Review Process & Introduction to the Equality Acts**

### ***The Review of the Equality Acts***

In June 2021, the Minister for Children, Equality, Disability, Integration and Youth announced a Review of the Equality Acts. The information published by the Department of Children, Equality, Disability, Integration and Youth suggests that this will involve a comprehensive review of all of Ireland's existing legislation concerning the promotion of equality and elimination of discrimination.

The full list of "legislation under consideration" published by the Department includes the following:

- Employment Equality Act 1998 (21/1998)
- Equal Status Act 2000 (8/2000)
- Intoxicating Liquor Act 2003 (31/2003), s. 25
- Equality Act 2004 (24/2004)
- Civil Law (Miscellaneous Provisions) Act 2008 (14/2008), Part 14
- Civil Law (Miscellaneous Provisions) Act 2011, Part 6
- Equal Status (Amendment) Act 2012 (41/2012)
- Equality (Miscellaneous Provisions) Act 2015 (43/2015)
- Education (Admission to Schools) Act 2018 (23/2018), s. 11

However, the Department has stated that this list "should not be considered exhaustive". Other relevant legislation may include the Workplace Relations Act 2015 (which provides the legal basis for the operation of the Workplace Relations Commission, the tribunal that hears most discrimination complaints) and the Intoxicating Liquor Act 2003 (which deals with certain discrimination complaints against licenced premises). It may also include the Irish Human

Rights and Equality Commission Act 2014 (which provides for the Public Sector Equality and Human Rights Duty, as well as for the powers and functions of the Irish Human Rights and Equality Commission).

More information in relation to the most significant pieces of legislation which are being considered by the Review is set out in Section 1.3 below.

### ***1.1 The Purpose of the Review***

In announcing the Review, the Minister noted that the Equal Status Acts and Employment Equality Act had been in place for over two decades, and that: “It is timely to take a deeper look at the legislation, to look at what is working and what is not working, and to identify where there may be gaps. We want to ensure that the legislation is as effective as possible in combatting discrimination and promoting equality”.

The Department’s statement announcing the Review also noted that “the review will also examine issues, which have been raised by IHREC, or raised in the context of reporting to international treaty bodies”. IHREC, as well as its predecessors (the Equality Authority and the Irish Human Rights Commission), have published numerous recommendations in relation to potential reforms to the Equality Acts. For example, IHREC has called for the introduction of a “socio-economic status” ground to the Equality Acts. International Treaty Bodies such UNCERD, UNCESCR and UNCEDAW have also made significant recommendations in relation to the equality code in their reports on Ireland. For example, in 2019, UNCERD called for a review of the Equality Acts with a view to “ensuring that an effective remedy is provided for discrimination that has a legislative basis”.

The Review will consider matters arising from the commitments made in the Programme for Government in relation to equality. Specifically, the Programme for Government commits to an examination of “the introduction of a new ground of discrimination, based on socio-economic disadvantaged status to the Employment Equality and Equal Status Acts”. It also commits to “amend the gender ground in equality legislation, to ensure that someone discriminated against on the basis of their gender identity is able to avail of this legislation”. The Review will also include “a review of current definitions, including in relation to disability”.

The Department has also indicated that the Review will examine the Equality Acts more generally:

“The review also provides an opportunity to review other issues arising, including whether or not further additional equality grounds should be added, whether existing exemptions should be removed or modified and whether or not the existing legislation adequately addresses issues of intersectionality.”

The Review will also include a practical examination of the operation of the Equality Acts “from the perspective of the person taking a claim under its redress mechanisms”:

“It will examine the degree to which those experiencing discrimination are aware of the legislation and whether there are practical or other obstacles which preclude or deter them from taking an action”.

The Review will also examine the use of non-disclosure agreements by employers in cases of sexual harassment and discrimination “in line with the issues raised in the Employment Equality (Amendment) (Non-Disclosure Agreement) Bill 2021”. That Private Members Bill proposed to prohibit the use of “non-disclosure agreements” in settlement agreements reached on foot of complaints under the EEA in certain circumstances.

Finally, the National Artificial Intelligence Strategy, *AI – Here for Good*, contains a commitment to “consider the implications of [Artificial Intelligence]” in the context of the review of the Equality Acts.

## **1.2 The Consultation**

In July 2021, the Department of Children, Equality, Disability, Integration and Youth launched a public consultation in respect of the Review. **The deadline for submissions to the consultation is Wednesday, 8 December 2021**. Written submission should be sent to [equalitypolicy@equality.gov.ie](mailto:equalitypolicy@equality.gov.ie) by that date.

The Department’s Consultation webpage states that the “views of the public are sought on”:

- 1) The functioning of the Acts and their effectiveness in combatting discrimination and promoting equality;
- 2) The degree to which those experiencing discrimination are aware of the legislation and whether there are obstacles which deter them from taking an action;

- 3) The scope of the current definitions of the nine equality grounds. This will include consideration of the gender ground, the disability ground and whether new grounds should be added, such as the ground of socio-economic discrimination;
- 4) Whether the legislation adequately addresses intersectionality or the intersection of discrimination across a number of grounds;
- 5) Whether existing exemptions in the legislation should be modified or removed;
- 6) Any other issues arising from the legislation.

The Department's statement announcing the Review referred to this consultation as the "first phase of a public consultation process" and noted that "further consultation will continue in the autumn".

The information published by the Department in respect of the Review is available here:

- Press Release - Department of Children, Equality, Disability, Integration and Youth, [Minister O'Gorman announces review of the Equality Acts](#).
- Consultation Webpage - Department of Children, Equality, Disability, Integration and Youth, [Consultation on the Review of the Equality Acts](#).

### **1.3 The Equality Acts**

The Review will consider Ireland's two primary pieces of equality legislation, the Equal Status Act 2000 and the Employment Equality Act 1998. It will also consider the subsequent legislation which has amended those Acts. Considered along with their amending legislation, those Acts are referred to as the **Employment Equality Acts 1998-2015** and the **Equal Status Acts 2000-2018**.

The Equality Acts prohibit discrimination in employment, goods and services, accommodation and education on nine grounds of gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community.

In addition, the Equal Status Acts prohibit discrimination in the provision of accommodation services against people who are in receipt of rent supplement, housing assistance, or social welfare payments (the Housing Assistance / "HAP" ground).

#### **The Equality Legislation prohibits:**

- Discrimination, subject to some exemptions, including indirect discrimination (discrimination in effect) and discrimination by association.
- Sexual harassment and harassment, and victimisation.
- Discriminatory advertising.

The Employment Equality Acts provide for equal pay for like work.

### ***Positive Action***

The Equality Acts allow for positive action to promote equality or to cater for the special needs of persons.

### ***Reasonable Accommodation***

The Equality Acts require the reasonable accommodation of people with disabilities. There are different standards in both Acts.

The Equal Status Acts only require those selling goods or providing services to provide reasonable accommodation or special treatment or facilities where without these it would be impossible or unduly difficult for a person with disabilities to avail of the goods and services. However, there is no obligations to provide reasonable accommodation where this would cost more than a nominal cost.

The Employment Equality Acts place a much heavier onus on employers to provide reasonable accommodation to enable a person with a disability: to have access to employment; to participate or advance in employment; to undertake training. This is unless the accommodation would impose a disproportionate burden on the employer.

Both pieces of legislation (as amended) can be accessed on the Law Reform Commission Website:

- [Employment Equality Acts 1998-2015](#)
- [Equal Status Acts 2000-2018](#)

Both pieces of legislation are lengthy and complex. IHREC and Community Law and Mediation have published extremely helpful guides to the provisions of both Acts:

- [IHREC “Your Rights” Guides to the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2018.](#)

- Community Law and Mediation [Equal Status Acts Guide](#) and [Employment Equality Acts Guide](#).

These guides contain a useful overviews of the key provisions of both Acts, including the exemptions and exceptions contained in the Acts, and where they apply. The guides also include practical information in relation to how a claim is pursued under the legislation. As a result, they also act as helpful guides to the relevant provision of the Workplace Relations Act 2015 and the Intoxicating Liquor Act 2003.

Section 42 of the Irish Human Rights and Equality Act 2014 provides for the **Public Sector Equality and Human Rights Duty**. Under this legal obligation, all public bodies in Ireland have responsibility to have regard to the need to promote equality, prevent discrimination and protect the human rights of their employees, customers, service users and everyone affected by their policies and plans.

This [IHREC webpage](#) contains several helpful resources on the duty and how it should be implemented, as well as the full text of section 42 of the 2014 Act.