

COVID-19 and the Public Sector Equality and Human Rights Duty

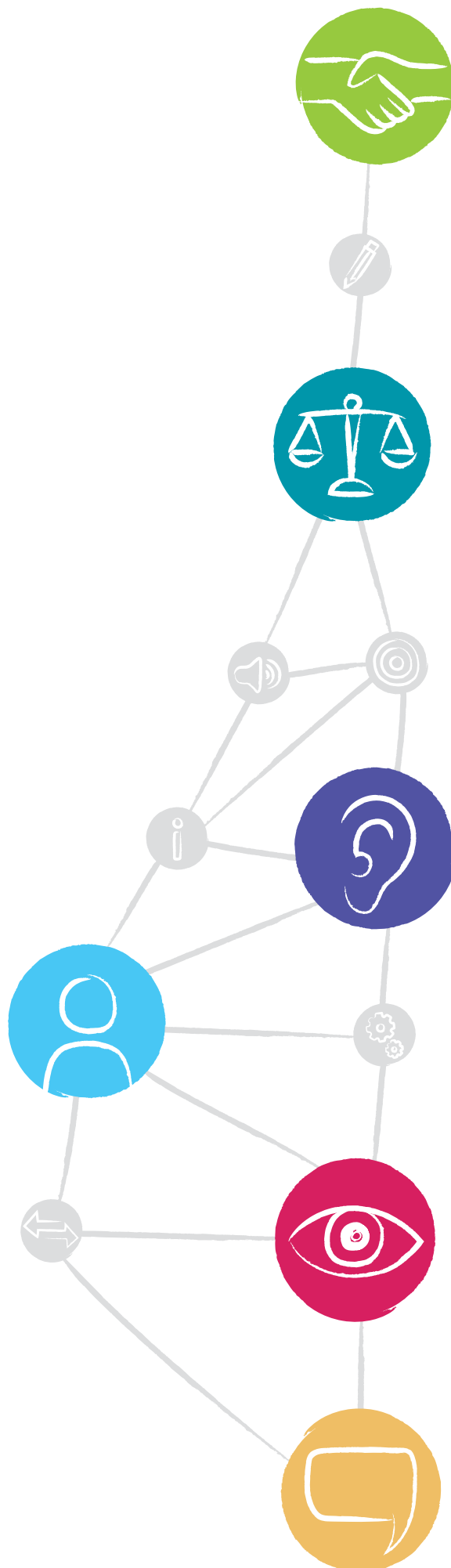


Introduction

The Irish Human Rights and Equality Commission recognises that the COVID-19 pandemic presents challenges for the protection of human rights, both in its threat to life and health of persons, and in actions taken by the State in its response and recovery plans. Times of crisis can exacerbate existing inequalities and render people more vulnerable. COVID-19 has a disproportionate impact on certain groups in society, for example older people, people with disabilities, minority ethnic groups and women.¹

Ireland's human rights and equality norms are critical to sustainable and effective recovery. The State is legally bound to respect, protect and fulfil its human rights commitments and has specific obligations under Irish equality legislation, as an employer and as a service provider.² These obligations apply both in normal times and emergency times. The Public Sector Equality and Human Rights Duty is part of the legislative framework governing human rights and equality in Ireland.³ It can assist public bodies in adhering to human rights and equality standards in a systematic way in their daily work.

This guidance note is to assist public bodies to utilise the Public Sector Equality and Human Rights Duty to incorporate equality and human rights considerations in COVID-19 response and recovery for the benefit of staff and service users, as part of their statutory duty. *It does not replace the existing and ongoing statutory obligation on public bodies to conduct a human rights and equality assessment across their functions, to set it out in their strategic plan alongside actions to address those issues, and report on them yearly in their annual report.*



Public Sector Equality and Human Rights Duty and COVID-19

The Public Sector Equality and Human Rights Duty places a legal obligation on all public bodies, in their daily work, to have regard to the need to:

- eliminate discrimination;
- promote equality of opportunity and treatment for staff and persons to whom it provides services; and
- protect the human rights of staff and service users.

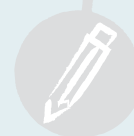
The Public Sector Equality and Human Rights Duty has been a legal obligation on public bodies since 1 November 2014. It is a permanent and ongoing obligation. It requires that public bodies have regard to eliminating discrimination, promoting equality and protecting human rights at every level across all the functions of their organisation.⁴ It applies to both staff and service users. It is a positive duty, requiring public bodies to be proactive and to consider human rights and equality issues when developing policies, plans and services.

The law requires public bodies to implement the Public Sector Equality and Human Rights Duty through a three step process in the context of strategic planning and reporting: Assess, Address, Report; to carry out an assessment of the equality and human rights issues relevant to their function and purpose; develop policies, plans and actions to address these issues; and report annually on progress and achievements.⁵ As public bodies move towards recovery and longer term planning, this provides an important framework to systematically consider and reflect the particular needs of staff and service users at risk of inequality, discrimination or disproportionate impact, and helps to mitigate and avoid unintended consequences.

It is recognised in Irish society that people from the following identified groups can face greater risks of discrimination, inequality and socio-economic marginalisation:

- people covered by the nine grounds under equality legislation: gender (including a transgender person or a person who is transitioning to another gender), civil status, family status (including lone parents and carers), age, sexual orientation, disability⁶, race, religion, and membership of the Traveller community⁷; and
- people at risk of poverty and social exclusion.

Responses shaped by equality and human rights considerations result in better outcomes, and are more efficient, sustainable and effective.⁸ Having due regard for equality and human rights supports better decision making and service delivery and ensures a sustainable and inclusive recovery. The World Health Organisation has stated that not paying explicit attention to the needs and vulnerabilities faced by certain groups subjects them to a higher risk of infection and undermines the broader COVID-19 response, and causes unintended difficulties and consequences. Special measures are required to be put in place to ensure protection from discrimination and to ensure access to information and services for such groups in COVID-19 response and recovery.⁹



Key Questions to Consider in COVID-19 Response and Recovery

The Public Sector Equality and Human Rights Duty helps public bodies apply an equality and human rights lens in the design, planning, implementation and review of initiatives and responses.

Here are key questions to consider in COVID-19 response and recovery plans, **for staff and/or service users:**

Developing responses

- Have you taken action to ensure that special measures or changes in service delivery introduced in response to COVID-19 are non-discriminatory?
- Have you considered the specific needs of people protected under the equality legislation: gender, civil status, family status, age, sexual orientation, disability, race, religion, membership of the Traveller community; and people at risk of poverty and social exclusion?
- Are there any specific targeted measures you need to consider to ensure that all persons are covered and no-one is left behind? Have you identified specific steps to make reasonable accommodation for people with disabilities?

Implementing responses

- Have you equality proofed any legislation, regulation or policies in terms of their impact across the grounds of the Equal Status Acts?
- Have you scrutinised any legislation, regulation or policies in terms of their impact on human rights; civil, political, economic, social and cultural rights?
- Have you reflected on your legal obligations as employers under the Employment Equality Acts to ensure any decision or policy you make in response to COVID-19 does not directly or indirectly discriminate against employees on any of the nine grounds protected under that legislation?

Consultation

- Have you consulted with civil society organisations representative of the equality grounds, and with staff and/or their representatives when a decision, plan or programme is at draft stage, seeking to involve everyone in your response?
- Have you consulted and coordinated planned action with other key actors and stakeholders working on the response to the issues identified?



Communication

- Are you proactively ensuring that all sections of the community have access to information, considering how traditional communication methods have been impacted by COVID-19?¹⁰
- Have you taken any measures to adapt communications to target certain audiences, e.g. children?
- Is the language you use inclusive, recognises and respects diversity, and avoids prejudice and stigma directed to particular communities?



Assessing/monitoring impact

- Are you gathering and reviewing disaggregated equality data and information on the impact of COVID-19, for example gender, age, disability, sexual orientation, ethnicity?¹¹
- Have you put in place a mechanism to monitor the impact of decisions, policies and plans on different groups, through feedback or complaint mechanisms?
- Have you in place a regular review process whereby your policies and plans are living documents that can be adapted based on emerging evidence from groups experiencing inequality and discrimination?

Further Information

- Irish Human Rights and Equality Commission: Implementing the Public Sector Equality and Human Rights Duty March 2019. <https://www.ihrec.ie/our-work/public-sector-duty/>

Endnotes

- ¹ See Government of Ireland (June 2020) [Report on the Social Implications of Covid-19 in Ireland: Update 5 June](#). National Disability Authority (April 2020): [Specific Issues for Persons with Disabilities regarding implications of COVID-19](#). See NPHET Press Statement (June 2020) [Statement from the National Public Health Emergency Team 14th June](#). See also Office of the High Commissioner for Human Rights COVID-19 Guidance 13 May 2020 available at https://www.ohchr.org/Documents/Events/COVID-19_Guidance.pdf.
- ² For example the Irish Constitution sets out a number of fundamental rights. Ireland is a party to the European Convention on Human Rights which has been indirectly incorporated into domestic law by the European Convention on Human Rights Act 2003. Please also refer to the Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2015.
- ³ Irish Human Rights and Equality Commission Act 2014, Section 42 <http://www.irishstatutebook.ie/eli/2014/act/25/section/42/enacted/en/html>
- ⁴ Functional areas include corporate services including budgets and procurement; human resources; service and programme provision; policy making; regulatory functions.
- ⁵ More information available in Section 42 of the Irish Human Rights and Commission Act 2014, and the Commission guidance: Implementing the Public Sector Equality and Human Rights Duty, Irish Human Rights and Equality Commission (2019) <https://www.ihrec.ie/our-work/public-sector-duty/>
- ⁶ This includes considerations relevant to persons with physical, sensory and intellectual disabilities, as well as those with mental health difficulties and autism. See National Disability Authority: [Specific issues for Persons with Disabilities regarding implications of COVID 19](#). April 2020. Available at www.nda.ie
- ⁷ The Employment Equality Acts 1998-2015 and the Equal Status Acts 2000-2015. The law also protects people in regard to 'housing assistance,' in the provision of accommodation, in receipt of rent supplement, housing assistance, or other social welfare payments.
- ⁸ United Nations. COVID-19 and Human Rights: We are all in this together. April 2020 <https://unsdg.un.org/resources/covid-19-and-human-rights-we-are-all-together>
- ⁹ World Health Organization. (2020). Addressing human rights as key to the COVID-19: response, 21 April 2020. <https://apps.who.int/iris/handle/10665/331811>.
- ¹⁰ Information on the prevention and early diagnosis of the disease should be accessible and available to everyone, relayed in different languages and adapted to specific needs, including those of persons with disabilities and minority ethnic groups.
- ¹¹ For more information and guidance see [Guidelines on Improving the Collection and Use of Equality Data](#), Equality Sub-Group, High Level Group on Non-Discrimination, Equality and Diversity, European Commission, DG Justice and Consumers, Brussels, 2018. While identifying an appropriate legal basis under Article 6 and a permissible condition under Article 9 of the General Data Protection Regulation (GDPR) for processing equality data is a matter for each public body as a data controller, the legal basis and condition does now exist to allow public bodies to process equality data. While there is a responsibility to protect personal data and comply with regulations, it is important to ensure that data is collected on all populations including minority cohorts to ensure that statistical analysis can be used to inform future legislation, policies and services.



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