

# Equal Status Acts 2000 to 2004 and Provision of Health Services



THE EQUALITY AUTHORITY  
AN tÚDARÁS COMHIONANNAIS



# 1. Introduction

This pamphlet seeks to support health service organisations to promote equality by stimulating a focus on the Equal Status Acts. It provides information on the provisions of the legislation to support compliance by health service organisations. It sets out the characteristics and practices of equality competent health service organisations to resource and inform an ambition for equality within the sector.

## 2. Characteristics of the Equality Competent Health Service Organisation

The equality competent health service organisation is committed to service provision where:

- Discrimination, harassment and sexual harassment, and victimisation are prevented and procedures are put in place to deal with any such issues that arise.
- The wide diversity that is present among customers is recognised and adjustments are made to address the practical implications of this diversity including, but not limited to, a particular focus on making reasonable accommodation for people with disabilities.
- Steps to achieve particular equality targets or outcomes are proactively pursued, among other ways, through the use of positive action allowed under equality legislation.

These organisations are planned and systematic in their approach to equality. Such an approach is based on institutional development. It involves a move away from ad-hoc, informal or reactive responses to the challenges of equality and diversity. It requires equality policies, plans

and staff training. It is informed by the provisions of the equality legislation.

Equality competent health service organisations secure an equality focus in governance within the organisation. Such a focus means that decision making is informed by equality objectives, a knowledge and understanding of diversity, and by the equality legislation. It involves the testing of key decisions, policies, services and employment strategies for their impact on equality and diversity, alongside participative approaches to decision-making and adequate data gathering and analysis.

The core objectives of an equality competent health service organisation include contributing to the elimination of health inequalities through:

- A coherent combination of mainstream and targeted service provision,
- Creating a context for real and informed choices by a diversity of customers, and
- Eliminating the range of barriers to a positive health status being experienced by specific groups.

### **3. Equality and the National Health Strategy**

This focus on an equality competent health service organisation reflects current policy commitments in relation to health provision. It builds on an ambition and a practice that is already evident in health service provision.

The National Health Strategy, *Quality and Fairness - A Health Service for You* acknowledges the need to reduce health inequalities and sets out:

1. That inequalities can arise because of gender, age and ethnicity, for example, as well as socio-economic status.
2. The intention of integrating an equality dimension into health and social services.
3. That the health system needs to reflect and respond to the increasing diversity in Irish society and will do so in a culturally sensitive way as an integral part of the services being provided to the wider community.

## 4. The Equal Status Acts 2000 to 2004

### A) Aim

The Equal Status Acts 2000 to 2004

- promote equality of opportunity,
- prohibit certain kinds of discrimination (with some exemptions) across nine specific grounds,
- prohibit sexual harassment and harassment,
- prohibit victimisation
- require reasonable accommodation of people with disabilities
- allow a broad range of positive action measures

### B) Grounds

The Equal Status Acts prohibits discrimination on the following nine grounds:

## The definition of the nine grounds

### *The Gender ground*

A man, a woman or a transsexual person.<sup>1</sup>

### *The Marital status ground*

Single, married, separated, divorced or widowed.

### *The Family status ground*

Pregnant, a parent or a person in loco parentis, of a person under 18 years, or a parent or resident primary carer of a person with a disability.

### *The Sexual orientation ground*

Heterosexual, gay, lesbian or bisexual.

### *The Religion ground*

Different religious belief, background, outlook or none.

### *The Age ground*

This only applies to people over 18 (except for the provision of car insurance to licensed drivers under that age).

### *The Disability ground*

This is broadly defined including people with all physical, sensory and intellectual disabilities and mental health issues.

### *The Race ground*

A particular race, skin colour, nationality or ethnic or national origin.

### *The Membership of the Traveller Community ground*

People who are commonly called Travellers and who are identified, both by Travellers and others, as people with a shared history, culture and traditions identified historically as a nomadic way of life on the island of Ireland.

<sup>1</sup> The Court of Justice in *P v S* (C-13/94) held that discrimination against a transsexual person constituted discrimination on the ground of sex.

## C) Scope

The Equal Status Acts applies to people who:

- buy and sell a wide variety of goods,
- use or provide a wide range of services, including public services like welfare, health, and services provided by the Department of Health and Children (subject to certain exemptions) and
- obtain or dispose of accommodation
- attend or are in charge of educational establishments

## D) Discrimination

Discrimination has a specific meaning in the Acts and there are different types of discrimination covered including indirect discrimination, discrimination by imputation and discrimination by association.

Discrimination is defined as the treatment of a person in a less favourable way than another person is, has been or would be treated in a comparable situation on any of the nine grounds, which

- exists
- existed
- may exist in the future, or
- is imputed to the person concerned.

Indirect discrimination happens where there is less favourable treatment by impact or effect. It occurs where people are, for example, refused a service not explicitly on a discriminatory reason but because of a provision, practice or requirement which they find hard to satisfy. If the provision, practice or requirement puts people who belong to one of the grounds covered by the Acts at a particular disadvantage,

then the service provider will have indirectly discriminated unless the provision, practice or requirement is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Discrimination by association happens where a person, associated with another person (belonging to the discriminatory grounds) is treated less favourably because of that association.

### **E) Harassment and Sexual Harassment**

Harassment and sexual harassment are prohibited in the provision of goods and services, accommodation and educational establishments.

Harassment is any form of unwelcome conduct related to any discriminatory ground.

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature.

In both cases, it is conduct which has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

In both cases, the unwanted conduct may include acts, requests, spoken words, gestures or the production, display or circulation of written words, pictures and other material.

A person's rejection of, or submission to, sexual or other harassment may not be used by any other person as a basis for a decision affecting that person.



A person who is responsible for the operation of a health service organisation must ensure that any person who has the right to be there is not sexually harassed or harassed. This 'responsible person' will be liable for the sexual harassment and harassment unless she or he took reasonably practicable steps to prevent it.

## **F) Advertising**

Health service organisations are prohibited from publishing or displaying, or causing to be published or displayed, an advertisement relating to the service provider which indicates an intention to discriminate or might reasonably be understood as indicating such an intention.

## **G) Victimisation**

Victimisation occurs where adverse treatment by a provider of goods and services, of accommodation or by an educational establishment happens as a reaction to:

- A complaint of discrimination having been made.
- A person having been a witness in any proceedings under the Equal Status Acts.
- A person having opposed by lawful means an act which is unlawful under the Equal Status Acts.

## **H) Reasonable accommodation**

Reasonable accommodation for people with disabilities may be defined as providing special treatment or facilities or making adjustments for a person to enable them to access a service.

A health service organisation must provide reasonable accommodation to meet the needs of a person with a disability where it would be impossible or unduly difficult

for that person to avail of the service or access goods without the special treatment, facilities or adjustments.

There is no obligation to provide special treatment, facilities or adjustments if they give rise to anything more than a 'nominal cost'. The meaning of 'nominal cost' is likely to depend on size and resources of the organisation – a large and well-resourced organisation is more likely to be required to afford a higher level of cost in making reasonable accommodation than a small one is.

The provision of reasonable accommodation is most often a low-cost exercise. It can seek to address a range of barriers – physical, communication and attitudinal. The starting point for providing reasonable accommodation is a proper and adequate assessment of the situation, including an assessment of the needs of the person, before decisions are taken which may be to the detriment of the person with disabilities. In an absence of such an assessment it will often be impossible for the organisation to know what facilities or special treatment may be reasonable, possible or effective. This necessarily involves discussing the matter with the person and, if necessary, their medical advisors. It also places an obligation on the organisation to adequately consider any reasonable proposals put forward by or on behalf the person.

## 1) Liability

Health service organisations are liable for discriminatory acts or sexual harassment or harassment by an employee in the course of their employment.

Health service organisations are also liable for discriminatory acts, harassment or sexual harassment by people acting on their behalf who are not employees.

A health service organisation has a defence against being liable for the actions of an employee or of people acting on their behalf if it can prove that it took such steps as were reasonably practical to prevent the employee or such people from committing the actions. Such steps would include having a policy on equal status issues, discrimination, harassment and sexual harassment, having procedures to address any such incidents, and taking steps to ensure that such incidents do not happen in the first place or recur.

### **J) Positive action**

Health service organisations are allowed to provide preferential treatment or to take positive measures that are genuinely intended to promote equality of opportunity for those who are disadvantaged. They may also provide preferential treatment or take positive measures that cater for the special needs of those who may require facilities, arrangements, services or assistance that are not required by others.

### **K) Exemptions**

The legislation contains a number of exemptions. Some of these have a particular relevance to the provision of health services.

- i) An overarching exemption in the Equal Status Acts covers all aspects of its application. If something is required by another law or a court order, the provisions of the Equal Status Acts cannot be construed as prohibiting it. However, if a health service organisation has any discretion about how it meets a legal requirement, then the way it does that must not breach the Equal Status Acts.

- ii) Treating a person differently does not constitute discrimination under the Equal Status Acts in the following circumstances:
  - a) Where the person is so treated solely with the exercise of clinical judgment in connection with a diagnosis of illness or his/her medical treatment
  - b) Where the person is incapable of entering into an enforceable contract, or of giving informed consent and for that reason the treatment is reasonable.

These exemptions apply on a case by case basis and cannot be used to justify a general practice, policy or approach. Any reliance on the informed consent exemption must show that the different treatment is reasonable because of the person's inability to give informed consent.

- iii) The Acts allow people to be treated differently on any of the nine grounds in relation to the use of premises/accommodation by persons in a particular category where premises or accommodation are reserved for religious purposes, refuge, nursing home, retirement home, home for persons with a disability or a hostel for homeless persons or for a similar purpose.
- iv) Public Authorities can treat certain non-nationals differently, on the basis of their nationality, who are outside the state or unlawfully present in it (for the purposes of the Immigration Act 2004) or in accordance with any provision or condition made by or under any enactment and arising from his or her entry to or residence in the state.

## **L) Enforcement**

Claims under the Equal Status Acts are brought to the Equality Tribunal. This is the quasi judicial body established to investigate, hear and decide claims under the Equal Status Acts. The Equality Tribunal can award compensation and can make an order for a specified course of action to be taken. Further information on making a claim is available in the information booklet on the Equal Status Acts 2000 to 2004 which is available from the Equality Authority.

## **5. Practice of the Equality Competent Health Service Organisation - Developing a Planned and Systematic Approach to Equality**

Institutions that are planned and systematic in their approach to equality have developed an equality infrastructure for their organisation. This equality infrastructure seeks to express and implement their commitment to equality. It is based on practical equality objectives and encompasses all nine grounds covered by the equality legislation. It combines a commitment to equality with the development of staff capacity to put this commitment into practice. It creates an organisational context that facilitates staff to apply their awareness and skills in contributing to organisational equality objectives.

An equality infrastructure involves the following:

1. Equality policies that cover areas of discrimination, harassment, sexual harassment, victimisation, and equality in employment and service provision.
2. Assigning responsibility for equality to a senior manager assisted by an equality committee.
3. Equality and diversity training for staff.
4. Development and implementation of an Equality Action Plan based on an Equality Review.

## Equality policies

Equality policies set out the commitment of an organisation to equality. They should encompass all nine grounds covered by the equality legislation. They should identify a commitment to equality in relation to employment and service provision and to the prevention and elimination of discrimination, sexual harassment and harassment, and victimisation. They should set out procedures to deal with incidents of discrimination, sexual harassment and harassment, and victimisation. They should identify strategies for the promotion of equality (including positive action), for the accommodation of diversity including but not limited to the reasonable accommodation of people with disabilities, and for the prevention of discrimination across the employment and service provision functions within the organisation. They should integrate with and make links to other relevant organisational policies.

## Responsibility

Combating discrimination, accommodating diversity and promoting equality needs to be the responsibility of all staff. However, these challenges require leadership. They need an

individual to have specialist knowledge in these areas and to play a particular role in stimulating and moving forward any necessary change. This role can be played by a dedicated equality officer or by allocating the role as part of the responsibilities held by a senior manager.

This responsibility for equality strategies can usefully be supported and guided by the formation of an equality committee. An equality committee can support a partnership approach to equality objectives. It can involve management, people from the different functional areas within the organisation, trade unions and employees, patient representative and user groups and organisations from across the nine grounds.

## Equality and Diversity Training

Equality and diversity training seeks to build an awareness of equality issues and to develop equality competencies among staff to ensure they can contribute to achieving equality objectives in their day to day work. Such training is key in ensuring that commitments made in equality policies can be reflected in the practice and culture of the organisation. This training can usefully be integral to staff development strategies. It can cover a range of topics including general training on:

- the equality legislation
- the nine grounds and the issues relating to their situation, experience and identity,
- implementing equality policies and equality action plans,
- issues of harassment and sexual harassment.

It can include more focused skills training on areas such as:

- recruitment and selection,
- customer service, and
- managing diversity.

## Equality Action Plan based on an Equality Review

An equality action plan sets out equality objectives to be achieved in relation to service provision and employment across the nine grounds. It is based on an equality review of the organisation and of its approach to service provision and employment. The equality review will establish the issues that need to be addressed in an equality action plan. It will also provide a benchmark against which to measure progress. An equality review examines the following from an equality perspective:

- **Planning** - This establishes to what extent equality is a part of the corporate and strategic development of the organisation. It assesses budgetary allocations and the extent to which these promote greater equality.
- **Equality Infrastructure** - This explores the management of equality and diversity in the organisation. It examines equality policies, the allocation of responsibility for equality, equality and diversity training, data gathering to support equality and the participation by organisations from within the nine grounds in decision making processes.
- **All organisational policies, procedures and practices** - This examines the policies, procedures and practices that govern the organisation's service provision and employment systems for their capacity to contribute to the elimination of discrimination, to accommodate diversity, and to promote equality across nine grounds.
- **Access and use of services** - This examines equality in



relation to areas such as physical access, communications, customer service strategies and information provision.

- **Access to and participation in the workplace** -  
Access to and participation in the workplace – This examines equality in relation to physical access, job design and work organisation, terms and conditions of employment and information provision on policies and procedures.
- **Perception of services and employment system** -  
This examines views held by employers, managers, employees and customers of diversity and equality issues and how they are being addressed in the organisation.

## 6. Practice of the Equality Competent Health Service Provider - Including an Equality Focus in Governance

Governance focuses attention on how organisations make decisions. Decisions in the health sector are based on a broad range of factors. Sometimes these factors are in conflict with each other. At times some factors assume crisis proportions and require priority. Equality needs to be a factor in decision making and needs to share a priority with other factors that influence key decisions made. Three key mechanisms within governance facilitate this. They are

- Equality Impact Assessments.
- Participation in decision making by individuals and groups that experience inequality.
- Monitoring outcomes from service provision and in employment through gathering and analysing data in relation to people across the nine grounds.

## Equality Impact Assessment

An Equality Impact Assessment is an exercise carried out on a new policy or service at a design stage or on a new employment strategy. Its aim is to ensure that the policy, service provision or employment strategy will benefit all groups covered under the equality legislation. It is based on assessing the capacity of the policy, or of the service, in its design and delivery, or of the employment strategy, to accommodate diversity across the nine grounds. An Equality Impact Assessment on a policy, service or employment strategy consists of the following steps:

1. Selection of a policy/service/strategy to be assessed. The selection process should be informed by the scope and scale of the initiative chosen.
2. Screening to identify which of the nine grounds should be included in an Equality Impact Assessment. This is a filtering mechanism to ensure a focus on groups whose diversity has practical implications for the particular policy, service or employment strategy to be assessed.
3. Data is gathered to establish a basis for understanding the diversity that is to be accommodated within the policy, service or strategy and the practical implications of this diversity. Relevant data should be considered on each group's situation, experience and identity. Situation refers to areas such as the economic, health, education or accommodation status of the group. Experience refers to the relationships between the group and members of the wider society. Identity refers to the values, beliefs and fields of communication of the group.
4. An assessment is made of the capacity of the policy, service or strategy in its design and delivery to accommodate the diversity of the different groups identified.

5. Formal consultation is organised with representative groups from the grounds selected. In the absence of local groups, national groups can be contacted for assistance. This consultation explores the quality of the data gathered and of the assessment of impact.
6. A decision on how to best design and deliver the policy, service or strategy must be taken.
7. Monitoring will help to ensure that the implementation of the policy, service or employment strategy will not have an adverse impact for any of the identified grounds.

## Participation

The capacity of an organisation to develop effective equality strategies and to maximise its contribution to addressing health inequalities can be enhanced through decision-making processes that allow participation by representative organisations from those groups experiencing inequality. This participation can be organised by:

- Including those who experience inequality and their organisations in existing consultative fora; and
- Developing a specific dialogue with organisations from within the nine grounds. This can be done on a ground by ground basis or could also be organised in a more integrated manner including all grounds.

## Data

The limited data available across the nine grounds is a significant obstacle in developing an equality focus within decision-making. Data is required in order to establish equality targets and indicators and to monitor progress or barriers. Data collected in relation to customers, patients

and employees from the nine grounds is needed to identify employment patterns, current service use, gaps in service provision and outcomes from service provision. There are sensitivities to gathering data which need to be addressed. There needs to be clarity provided to all as to why it is being gathered. People need to be allowed to self-identify across the nine grounds without any obligation to identify themselves. Issues of confidentiality and anonymity have to be addressed.

## 7. Resources

The following information booklets are available from the Equality Authority:

- Equal Status Acts 2000 to 2004
- Employment Equality Acts 1998 and 2004
- Guidelines on Equality and Diversity Training in Enterprises.
- Guidelines on Employment Equality Policies in Enterprises.
- Codes of Practice on Sexual Harassment and Harassment at Work
- An Equality Impact Assessment: Initial Guidelines for City and County Development Boards
- Reasonable Accommodation for People with Disabilities in the Provision of Goods and Services.

## 8. Further information

**The Equality Authority**

Clonmel Street

Dublin 2

Lo Call: 1890 245 545

Telephone: 01 417 3333

Text phone: 01 417 3385

Facsimile: 01 417 3366

Email: [info@equality.ie](mailto:info@equality.ie)

Website: [www.equality.ie](http://www.equality.ie)



**The Equality Authority**  
Clonmel Street  
Dublin 2

Public Information Centre  
Lo Call: 1890 245 545

Tel: (01) 417 3333  
Business queries: (01) 417 3336  
Text phone: (01) 417 3385  
Fax: 01 417 3366  
Email: [info@equality.ie](mailto:info@equality.ie)  
Website: [www.equality.ie](http://www.equality.ie)



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