Progress Statement

This publication is supported under the European Union Programme for Employment and Social Solidarity – PROGRESS (2007–2013).

This programme is managed by the Directorate-General for Employment, Social Affairs and Equal Opportunities of the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields.

The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries.

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Your **EQUAL STATUS**Rights Explained

Plain English Guide to the Equal Status Acts 2000 – 2011





First published (November) 2011 by

The Equality Authority

Birchgrove House Roscrea Co. Tipperary

and

The Equality Authority

2 Clonmel Street Dublin 2

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ISBN-13 978-1-908275-32-5

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1. About the Equal Status Acts

This booklet tells you about the main terms of the Equal Status Acts 2000 – 2011. These Acts aim to protect citizens against certain kinds of discrimination, harassment and sexual harassment that can happen in everyday living – for example, shopping, using services, going to school or college, socialising, or looking for accommodation.

The Equal Status Acts promote equality and ban discrimination across nine different grounds (categories). This booklet explains the nine grounds. If you want more detailed information about the Equal Status Acts, you can get copies of the full legislation from:

Government Publications Sales Office Molesworth Street Dublin 2.

You can also find them online at www.equality.ie

This booklet only gives information – it is not a legal document.

The Equal Status Acts don't cover discrimination in the workplace – there are separate Employment Equality Acts in place for that and a separate information booklet covering employment is available.

What are the aims of the Equal Status Acts?

The Equal Status Acts 2000 – 2011 aim to:

- promote equality;
- ban certain kinds of discrimination across nine grounds;
- ban sexual harassment and harassment;
- ban victimisation;
- promote 'reasonable accommodation' of people with disabilities (this is explained on page 15);
- allow a broad range of positive action measures (this is explained on page 16).

What are the nine grounds?

The Equal Status Acts 2000 – 2011 ban discrimination on the following nine grounds:

The Gender ground

You are entitled to equal treatment whether you are a man, a woman or a transgender person.

The Civil Status ground

You are entitled to equal treatment whether you are single, married, separated, divorced, widowed, in a civil partnership or previously in a civil partnership.

The Family Status ground

You are entitled to equal treatment whether you are pregnant, a parent of a child under 18 years, or the resident primary carer or parent of a person with a disability.

The Sexual Orientation ground

You are entitled to equal treatment whether you are gay, lesbian, bisexual or heterosexual (straight).

The Religion ground

You are entitled to equal treatment no matter what your religious beliefs are or even if you don't hold any religious beliefs.

The Age ground

You are entitled to equal treatment if you are any age over 18. (The age ground only applies to young people under 18 if they hold a driver's licence and are buying car insurance.)

The Race ground

You are entitled to equal treatment no matter what your race, skin colour, nationality or ethnic origin is.

The Traveller community ground

You are entitled to equal treatment if you are a member of the Traveller community and share the traditions and culture of Travellers in Ireland.

The Disability ground

You are entitled to equal treatment if you have a disability, for example, physical, intellectual, learning, cognitive or emotional. Disability could also mean that you suffer from a particular medical condition.

Who is protected under the Acts?

The Acts apply to anyone who:

- buys or sells a wide variety of goods;
- uses or provides a wide range of services;
- provides or uses accommodation (landlords, tenants, hotels and so on);
- attends or manages a pre-school, school, college or other educational establishment.

Clubs, such as sports clubs, are treated slightly differently under the Equal Status Acts. There is a separate section dealing with clubs on page 28.

Who decides discrimination claims?

Most claims are brought to the Equality Tribunal which is similar to a court. The Tribunal will examine the claim and make a ruling on it. Claims of discrimination in relation to clubs and licensed premises are dealt with in the District Court. All appeals from the Equality Tribunal and the District Court are dealt with by the Circuit Court.

What is discrimination under the Equal Status Acts?

Broadly speaking, discrimination means that you receive less favourable treatment than other people because of who you are. However, not all forms of discrimination are covered by the Equal Status Acts.

Discrimination has a specific meaning in the Acts and there are different types of discrimination covered by the Acts.

What are the different types of discrimination?

- Direct discrimination is when a person is treated in a less favourable way than another person in the same situation under any of the nine grounds covered by the Acts.
- Indirect discrimination happens where an individual or group of people are placed at a disadvantage as a result of conditions or rules which they might find hard to satisfy and which cannot be reasonably justified. For example, a height requirement might seem neutral but it has a more negative impact on women than men. This is indirectly discriminatory unless it can be proved that the height requirement is justified, appropriate and necessary.
- Discrimination by association happens when a person is treated less favourably simply because they are associated with or connected to another person. For example, if a person was refused a product or service or was harassed because they were married to a person of a different religion, they are being discriminated against

because they are being associated with their partner's belief and being refused on that basis.

 Discrimination by imputation happens when a person is treated less favourably because it is assumed that they belong to one of the categories covered by the nine grounds whether or not that is the case. For example, if you have a dark complexion and are refused a product or service because the service provider assumes you are of a different race or nationality, this would be discrimination on the race ground.

Do the Acts protect against all forms of discrimination?

The Equal Status Acts set out particular forms of discrimination that are against the law. However, the Acts do not guard against all forms of discrimination. In other words, there are some exemptions in the Acts. Some of these are general exemptions and some apply to particular services.

This booklet has separate sections that deal with how the Acts work in relation to:

- goods and services;
- accommodation;
- · educational establishments; and
- clubs.

The exemptions in each category are given at the end of each section. There is a separate section for general exemptions.

How do the Acts protect against harassment and sexual harassment?

The Acts state that sexual harassment and harassment in the provision of goods and services, accommodation and educational establishments, are against the law.

What is harassment and sexual harassment?

Harassment is any form of unwanted conduct related to any of the nine discriminatory grounds.

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

In both cases, it is conduct which damages the victim in terms of their dignity, self-esteem, and so on, and places them in a hostile situation or environment. The unwanted conduct might take the form of actions, gestures, spoken words, written words, emails, text messages, pictures, and so on.

If you are harassed or sexually harassed in a place where you have a right to be, the person in charge of that place could be held responsible for the harassment or sexual harassment. This includes, for example, school principals, shopkeepers, landlords, and so on. They are responsible for making sure that anyone who has a right to be on their premises is not harassed or sexually harassed and they must take steps to prevent it from happening. This is called 'vicarious liability'.

'Vicarious liability' means that a person must take responsibility for someone else's actions. For example, if you are discriminated against in a shop by an employee, your claim would be against the shop owner. They must take responsibility for the behaviour of their employees unless they can prove they did everything they could to prevent such behaviour.

What is 'victimisation'?

In relation to the Acts, 'victimisation' is where a person is badly treated or penalised by others because they have made a complaint about discrimination to the Equality Tribunal or have been involved in some way in a complaint under the Equal Status Acts. Victimisation is against the law.

Disability - What is 'reasonable accommodation'?

'Reasonable accommodation' means providing special treatment or facilities to make sure that people with a disability can avail of particular goods, services, housing, and so on.

The following individuals and organisations must do all that is reasonable to meet the needs of a person with a disability:

- people and organisations selling goods or providing services;
- people and organisations selling or letting accommodation or providing accommodation;
- schools, colleges and other educational institutions;
- clubs.

However, these people and organisations do not have to provide special facilities or treatment if it would cost them more than a 'nominal' cost'.

A nominal amount will be different for each person or organisation as it depends on the size of the business and its budget. For instance, it would be reasonable to expect a large chain store to provide ramps, lifts and so on for wheelchair access but a small shopkeeper might not be able to meet this expense.

What is 'positive action'?

Under the Acts, 'positive action' means doing something to:

- promote equality of opportunity for disadvantaged people;
 and
- meet the special needs of people who may need extra help.

For example, if a supermarket offers families a free childcare service while they are shopping, it would be a positive action on the ground of family status.

What about equality in advertising?

It is illegal under the Acts to publish or display an advertisement that indicates that certain people or groups would be treated less favourably. For example, a shop advertising for a 'young, energetic salesgirl', might indicate an intention to discriminate against older people and men.

2. How do the Acts work in relation to goods and services?

Generally, people cannot discriminate when they provide goods and services to the public, even if the goods and services are free.

What is a service?

If you receive a 'service', it means a person or organisation has done something for you or supplied you with something you wanted or needed. Examples of services are:

- banking, insurance, grants, loans, credit or financing;
- entertainment, recreation, eating out;
- cultural activities;
- transport or travel;
- services or facilities provided by a club (which are available to the public or a section of the public);
- professional trades or services.

This list gives you some examples of services but there could be many others. The Equal Status Acts cover a wide range of services.

Are public services covered by the Acts?

Services provided by the State (such as the Health Service Executive, local authorities, and so on) are covered but there are some exemptions. The main exemption is anything required by another Irish law or EU law. For example, a public service provider may not have to provide a particular service to someone if this conflicts with social welfare law. There are also specific exemptions on the nationality ground in relation to the treatment by public authorities of certain foreign nationals. (See the section on General exemptions.)

Goods and services exemptions

The Acts allow you to be treated differently on the following grounds:

Gender

You can be treated differently in relation to cosmetic services that involve physical contact – for instance, hairdressing, body waxing, and so on. You can also be treated differently if there is a risk that you could be embarrassed because of a lack of privacy. For example, a woman might feel embarrassed having a bikini wax if there was a man present in the same room.

Religion

You can be treated differently in relation to religious goods and services. For example, it is acceptable to facilitate people to observe religious occasions such as Christmas, Passover or Ramadan.

Age

You can be treated differently on age grounds in relation to the adoption and fostering of children. For example, although there is no legal upper age limit in Ireland to adopt a child, an adoption agency might set its own age limit.

Mixed grounds

Sporting events

The Acts allow people to be treated differently on the basis of their gender, age, disability or nationality but only if the differences are reasonably necessary and relevant. For example, it is acceptable to run an event like the Special Olympics.

Drama and entertainment

You can be treated differently on the basis of your gender, age, disability or race but only if it's necessary for the good of the production. For example, it would be reasonable to audition only women in the age range 20-35 for the role of Maria in *The Sound of Music*.

All grounds

The Acts allow people to be treated differently on any of the nine grounds in relation to the following:

Insurance

This covers annuities, pensions, insurance policies, and so on. Life assurance policies are based on 'risk'. Insurance companies decide how much to charge you for your policy based on what kind of 'risk' you are. For example, if you have a strong family history of a particular illness, you might be considered 'high' risk and have to pay more for life assurance than somebody else. This kind of different treatment would be allowed if the differences are based on proper risk assessment, research and statistics.

Wills and gifts

A person making a will or a gift is entitled to choose whoever they want to benefit.

Promotion of special interests

This covers services that promote or favour the interests of one person or group over another, for example, an active retirement association.

Special needs

This covers goods and services which can reasonably be regarded as being suitable only to the needs of certain people. For example, it is not discrimination under the Acts for disabled parking spaces to be reserved solely for people with disabilities.



3. How do the Acts work in relation to accommodation?

The general rule is that there can be no discrimination across the nine grounds in relation to:

- selling a property;
- ending a tenancy agreement;
- providing accommodation or any related service or amenity (hotels and so on); or
- ending the provision of accommodation.

The premises or lodgings must be available to the general public or a particular section of the public.

Accommodation exemptions

Gender

The Acts allow people to be treated differently in relation to personal privacy where lack of privacy might cause embarrassment.

Mixed grounds

The Acts allow housing authorities to treat people differently in relation to housing based on:

- family size;
- family status;
- marital status;
- disability;
- age;
- membership of the Traveller community.

The Acts also allow for different treatment for housing accommodation provided by or on behalf of the Minister on these grounds and also on the grounds of gender and nationality.

All grounds

The Acts allow people to be treated differently on any of the nine grounds in relation to the following:

Wills and gifts

The person making the will or gift can choose who they wish to benefit.

A person's home

This covers where accommodation is provided by a person in their private home. For example, if a home-owner took in a lodger and then discovered that this was disrupting their private or family life, they would not be discriminating if they asked the lodger to leave.

Use of the accommodation by people in a particular category This covers accommodation reserved for a particular category of people, for example, retirement homes for older people, hostels for homeless people, and so on.



4. How do the Acts work in relation to educational establishments?

Educational establishments include pre-school services; primary or post-primary schools; adult, continuing or further education establishments; and universities or other third-level institutions. They also include private educational establishments.

The general rule is that an educational establishment may not discriminate in relation to:

- the admission of students or the terms or conditions of admission;
- the access of any student to any course, facility or benefit;
- any other term or condition of participation; or
- the expulsion of a student or other penalty.

Educational establishments exemptions

Gender

Single sex schools are allowed. Primary and secondary schools may be boys only or girls only.

Religion and Gender

Institutions providing religious training to ministers of a particular religion may admit students of only one gender or religious belief.

Educational establishments - special exemptions

Ethos (religious standards and traditions) of the school

The Acts allow primary and post-primary schools which follow the values of a particular religion to give preference to applicants of that religion. Primary and post-primary schools may refuse to admit a student who is not of that religion. However, they must prove that the refusal is essential to maintain the ethos of the school.

Mature students

The Acts allow universities or other third-level or adult education institutions to treat mature students differently in the allocation of places. For example, mature students may not need to apply for a university place through the Central Applications Office (CAO) points system.

Scholarships

The Acts allow universities or other third-level or adult education institutions to treat some students differently by way of sponsorships, scholarships, bursaries, and so on. However, these awards must be in keeping with tradition. For example, a scholarship that was established by a law firm might only be open to students studying law.

Student exchange

The Acts allow universities and other third-level or adult education institutions to select particular students to take part in

student exchange programmes. For example, they might limit places to students who have reached a certain mark in exams.

Grants, fees, allocation of places

The Acts allow universities and other third-level or adult education institutions to treat nationals of European Union (EU) member states differently in relation to fees and the allocation of places. The Acts also allow the Minister for Education and Skills to treat nationals of an EU member state differently in relation to educational grants.

Sporting facilities and events

The Acts allow educational establishments to treat people differently on the basis of gender, age or disability but only to the extent that the differences are necessary having regard to the nature of the facilities or events. For example, a school organising a sports day could categorise races according to age.

Disability

The Acts allow educational establishments to treat students with disabilities differently (although they must provide 'reasonable accommodation' subject to the nominal cost exemption. This is explained on page 15). For example, a school may not have to keep on a student with a disability if the school can show that this would make it impossible or extremely difficult to teach other students.

5. How do the Acts work in relation to clubs?

The Acts deal with clubs that are licensed to sell alcohol to members and certain visitors and that are registered under the Registration of Clubs Act 1904 – 1999.

Clubs such as sports clubs, golf clubs and so on are treated slightly differently under the Acts in that discrimination is not completely banned.

What is discrimination in relation to clubs?

In general, a club will be regarded as discriminating if:

- it has rules or practices which discriminate against a member or applicant; or
- if a person involved in the club's management discriminates against a member or applicant in relation to any aspect of club business. For example, if a staff member or committee member of a golf club gives preference to an Irish person applying for membership over an applicant from a different country, this would be regarded as discrimination.

What is allowed?

It is **not** discrimination if a club:

 is for a particular group of people – for example, a gay club, a club for people with disabilities, a club for members of the Traveller community, and so on;

- sometimes only admits certain club members. In this case, the club must offer the same or a similar benefit or privilege to its other members. For example, a tennis club can run a men-only tournament but it must at some stage offer a similar event to its women members;
- has different types of membership that are not based on any discriminatory ground and its members are free to choose these, for example, full membership, half membership, offpeak membership, and so on;
- makes a genuine effort to include people of a particular gender who may have been excluded in the past. For example, a golf club may offer special rates for full membership for women;
- treats members of a particular gender, age, disability, nationality or national origin differently with regard to sporting facilities or events. For example, a sports club can organise different competitions for different age groups.

Who decides claims against clubs that discriminate?

These decisions are made by the District Court and on appeal by the Circuit Court. The Equality Tribunal does **not** make decisions on claims about clubs that discriminate.

Any person, including the Equality Authority, can apply to the District Court for a declaration that a club discriminates. If this is found to be true and it is the first order made against the club, the District Court can suspend the club's certificate of registration to sell alcohol for up to 30 days. If a club is found to discriminate a second time, its certificate of registration will not be renewed.

However, employees of the club should not be placed at a disadvantage by this order. Under the Acts, the club can appeal the decision to the Circuit Court. Also, the club can apply to the District Court (usually after it has made some changes) to see if it is still considered to be a discriminatory club. Actions taken to the District Court and the Circuit Court may involve costs.

Note: Ordinary licensed premises are not clubs but claims of discrimination in relation to licensed premises – such as pubs – are also dealt with in the District Court rather than at the Equality Tribunal.



6. General exemptions

There are several significant exemptions in the Acts.

You should be aware of these exemptions but remember that the overall purpose of the Equal Status Acts is to promote equality and outlaw discrimination.

Statutory exemption

This is a general exemption meaning that nothing in the Equal Status Acts should cause a person to break any other Irish law or any EU laws and treaties that have been adopted by Ireland.

Exemption regarding certain nationals of other countries

Public authorities can treat certain nationals of other countries differently on the basis of their nationality if they are unlawfully in the State or if provided for by law. For example, a foreign national cannot claim discrimination against a decision of a local authority if that person is in the State illegally.

Exemption for risk of criminal or disorderly conduct

A person can be refused goods, services or accommodation if an experienced provider believes that there would be a substantial risk of that person abusing the service and causing trouble.

Exemptions for other reasons

It is not discrimination if a person is treated differently because of the exercise of a clinical judgement in relation to that person's medical condition.

It is not discrimination to treat a person differently if that person is not capable of entering into a contract or giving informed consent

7. How do I make a claim?

Step 1: Written notification

First of all, you must write to the person you're complaining about within **two months** of the last incident of discrimination and tell them that you intend to make a complaint under the Equal Status Acts. You can do this by filling out Form ES 1. This is available from:

The Equality Tribunal 3 Clonmel Street Dublin 2.

Phone: +353 (01) 477 4100

You can also download the forms from www.equalitytribunal.ie.

When you get Form ES 1, you will also get Form ES 2. Form ES 2 is filled out by the person you're complaining about and gives them a chance to outline what happened from their

point of view. You must send both forms to the person you're complaining about.

You should keep a copy of the completed Form ES 1 and also get a certificate of posting from the post office as proof of posting.

You cannot bring a claim to the Equality Tribunal unless you have completed this step.

Strict time limits apply for the notification. You can apply to the Director of the Equality Tribunal to extend the notification time limit from 2 to 4 months but the Director will only do this if he or she believes there is a good enough reason. You can also apply to the Director to dispense with the notification requirement but the Director will only do this in exceptional circumstances.

Note: A parent or guardian can make a claim on behalf of a child or a person with special needs.

Step 2: Advancing a claim

If you don't get a reply from the person you're complaining about within one month or if the reply is not to your satisfaction, you may send your complaint to the Equality Tribunal. You must do this within **6 months** of the discrimination.

You do this by filling out Form ES 3 (which you can get from the Equality Tribunal or online) and sending it to the Equality Tribunal.

Note: Strict time limits also apply for lodging a claim with the Tribunal. You can apply to the Director of the Equality Tribunal to extend the time from 6 to 12 months but the Director will only do this if he or she believes there is a good enough reason.

Step 3: At the Equality Tribunal

When the Equality Tribunal receives your complaint, it will deal with it by either mediation or investigation, or both.

Mediation

This is where the Director of the Equality Tribunal appoints a mediation officer to help settle the dispute. Mediation will only take place where both parties agree to enter the process. The mediation officer is a neutral person whose job is to work with both parties to reach an agreement and settle the claim.

To resolve a dispute through mediation, both parties must agree on the terms of settlement. If a settlement is reached through mediation, the terms of the settlement are confidential and legally binding. Mediation agreements can be enforced through the Circuit Court.

Investigation

If the case is not dealt with by mediation or the mediation fails, the claim then goes to the investigation stage. Here, the Director of the Equality Tribunal appoints an equality officer to investigate the claim and make a decision. These investigations are held in private – that is, there are no members of the public present. The equality officer's decision is legally binding.

Representation and costs

If you are making a complaint, you may represent yourself or you can choose to be represented by a lawyer, trade union, community group or some other representative. In general, costs are not covered for either the person making the complaint or the person being complained about.

Results

If an equality officer finds in your favour, they can order compensation of up to €6,350 in total. The equality officer can also order people to take specified courses of action. For example, if you were discriminated against in a shop and you win your claim, the equality officer might order the shop manager to provide customer care training to staff.

Dismissing a claim

The Director of the Equality Tribunal can dismiss a claim if he or she considers that it was made for the wrong reasons – for example, simply to irritate or annoy somebody. The Director can also dismiss a claim if, after a year, it appears that the person making the complaint has decided to drop it.

Appeals

All decisions (including decisions on time limits and dismissal of claims) may be appealed to the Circuit Court no later than 42 days from the date of the Equality Tribunal's decision. There is no further right of appeal except to the High Court on a point of law. An appeal on a point of law means that there is a question about the interpretation of the law itself and is separate from the facts of your complaint. Unlike the Equality Tribunal, costs are awarded in the Circuit Court and other courts.

Obeying the ruling - enforcement

If settlement terms aren't carried out as ordered by the Director of the Equality Tribunal, the matter can be brought to the Circuit Court to enforce the decision. The Court will order that the settlement terms are carried out.



Appendix A

The role of the Equality Authority

The Equality Authority has a broad range of tasks under the Equal Status Acts 2000 – 2011. The Equality Authority works towards:

- combating discrimination in the areas covered by the Acts;
- promoting equality of opportunity in the areas covered by the Acts;
- providing information on the Acts to the general public;
- reviewing the operation of the Acts; and
- making recommendations to the Minister.

Legal assistance

The Equality Authority can advise you if you believe you have been discriminated against. In a limited number of cases the Equality Authority can represent people taking cases to the Equality Tribunal or other Courts subject to criteria set down by the Board of the Authority. A person with a claim can also represent themselves or be represented by a lawyer, trade union or other representative.

Information and support

The Equality Authority provides information to the public on the Equal Status Acts 2000 – 2011. This includes guides to the Acts and training DVDs. You can get these from:

Tipperary office

The Equality Authority
Public Information Centre
Birchgrove House
Roscrea,
Co Tipperary
Ireland

Office hours:

Monday to Thursday:

Friday:

Contact:

LoCall: 1890 245 545

Phone: +353 (0505) 241 26

Facsimile: +353 (0505) 223 88

Email: info@equality.ie

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The Equality Authority 2 Clonmel Street Dublin 2 Ireland

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9.15am - 5.15pm

1890 245 545

+353 (01) 417 3336

+353 (01) 417 3331

Website: www.equality.ie

Other booklets available in this series include:

- Guide to the Adoptive Leave Acts 1995 2005
- Guide to the Maternity Protection Acts 1994 2004
- Guide to the Parental Leave Acts 1998 2006
- Guide to the Employment Equality Acts 1998 2011

Appendix B

Useful Contacts

Equality Tribunal

3 Clonmel Street Dublin 2

Phone: +353 (01) 477 4100

Facsimile: +353 (01) 477 4141

LoCall: 1890 344 424

Website: www.equalitytribunal.ie

Email: info@equaltytribunal.ie

National Consumer Agency (NCA)

4 Harcourt Street
Dublin 2

Phone: +353 (01) 402 5555

LoCall: 1890 432 432

Department of Justice and Equality

Equality Division Bishop's Square Redmond's Hill Dublin 2

Phone: +353 (01) 479 0200

LoCall: 1890 555 509

Citizen Information Board

LoCall: 1890 777 121

Website:

www.citizeninformation.ie