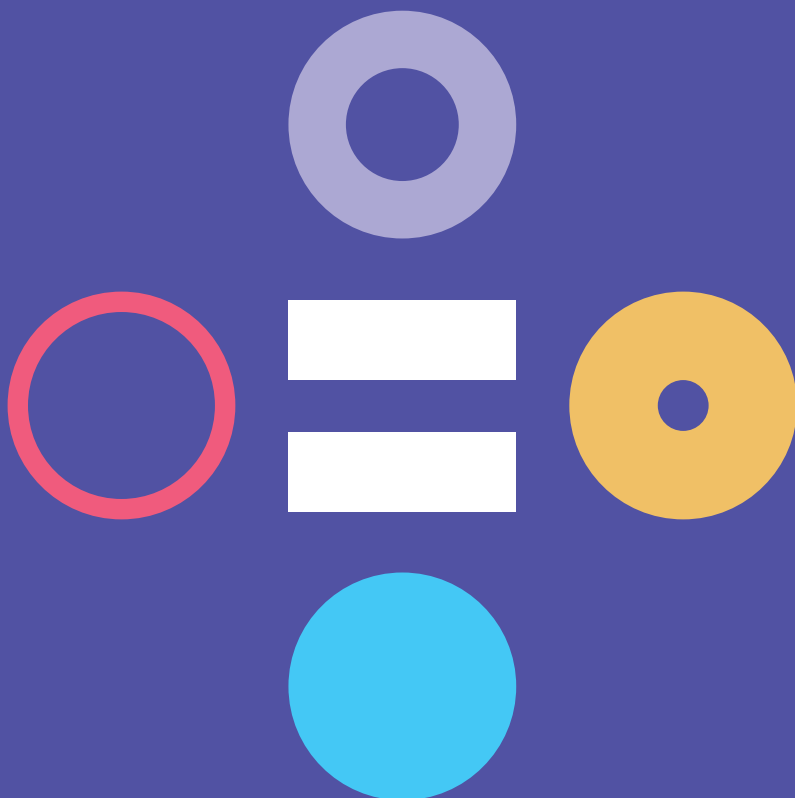


THE EQUAL STATUS ACTS 2000-2018

A guide to your rights if you are discriminated against in accessing goods or services



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A guide to your rights if you
are discriminated against in
accessing goods or services

Published by the Irish Human Rights and Equality Commission.

2nd edition, October 2020.

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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.

ISBN 978 0 9957296 4 3

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Introduction

INTRODUCTION

The Irish Human Rights and Equality Commission (IHREC) was established on 1 November 2014 as the independent statutory body to protect and promote human rights and equality in Ireland. We have a specific role to work to combat discrimination and promote equal opportunities in the areas covered by the Equal Status Acts. We also have a role to provide information on the Acts.

This information booklet explains the main elements of the Equal Status Acts 2000-2018 ('the Acts'). These Acts aim to protect individuals from certain kinds of discrimination, harassment and sexual harassment that can happen in everyday living. The booklet also offers individuals a step by step guide to claiming their rights under the Acts, if they feel they have been discriminated against.

This booklet sets out the main elements of the Equal Status Acts 2000-2018 (the 'Acts') and is intended for information purposes only. It is not a legal document.

Overview of the Acts

SCOPE OF THE EQUAL STATUS ACTS

Definition of the Equal Status Acts

The Equal Status Acts 2000–2018 (the 'Acts'):

- promote equality;
- prohibit certain kinds of discrimination (with some exemptions) across a number of specified grounds;
- prohibit sexual harassment and harassment across a number of specified grounds;
- prohibit victimisation;
- require reasonable accommodation of people with disabilities;
- allow a broad range of positive action measures.

The Acts also implement the following two EU Directives – the Race Directive¹ and the Gender Goods and Services Directive².

The Acts apply to people who:

- buy and sell a wide variety of goods;
- use or provide a wide range of services;
- obtain or dispose of accommodation;
- attend at, or are in charge of, educational establishments.

1. Council Directive 2000/43/EC of 29 June 2000 implementing equal treatment between persons irrespective of racial or ethnic origin.

2. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services.

There are separate provisions on discriminatory clubs and licensed premises (see page 34).

If you want more detailed information about the Acts you can get copies of the full legislation online at: www.ihrec.ie or www.irishstatutebook.ie.

The Equal Status Acts do not cover discrimination in the workplace – there are separate Employment Equality Acts in place for that and a separate information booklet covering discrimination in employment is available at www.ihrec.ie.

DISCRIMINATORY GROUNDS

The Acts prohibit discrimination on specific grounds.

Generally, discrimination occurs where one person is treated less favourably than another person in a comparable situation, because they differ under any of the following grounds:

The **'gender ground'** - Discrimination on the 'gender ground' happens where there is less favourable treatment of one person compared to another because one is male and the other is female.

Under EU law a transgender person who experiences discrimination arising from their gender reassignment, or transition, is also protected under the gender ground.

The **'civil status ground'** - Discrimination on the 'civil status ground' happens where there is less favourable treatment of one person compared to another person because they are of different civil status.

'Civil status' is defined as being single, married, separated or divorced, widowed, in a civil partnership or being a former civil partner in a civil partnership that has ended by death or been dissolved.

The **'family status ground'** - Discrimination on the 'family status ground' occurs where there is less favourable treatment of one person compared to another person because one person has family status and the other does not or has a different family status.

'Family status' means being pregnant or having responsibility as a parent or person *in loco parentis* for a person under the age of 18 years or responsibility as a parent or resident primary carer of a person of 18 years or over with a disability requiring care or support.

The **'sexual orientation ground'** - Discrimination on the 'sexual orientation ground' happens where there is less favourable treatment of one person compared to another person because one has a different sexual orientation.

'Sexual orientation' is defined as heterosexual, bisexual or homosexual.

The **'religion ground'** - Discrimination on the 'religion ground' happens where there is less favourable treatment of one person compared with another person because one has a different religious belief, background or outlook from the other, or one has a religious belief, background or outlook and the other has not.

The **'age ground'** - Discrimination on the 'age ground' occurs where there is less favourable treatment of one person compared with another person because they are of different ages.

'Age' applies to people over 18 years of age, except for the provision of car insurance to licensed drivers under that age.

The **'disability ground'** - Discrimination on the 'disability ground' occurs where there is less favourable treatment of one person compared to another person because one has a disability and the other has not, or the other has a different disability. 'Disability' is defined broadly to include physical, intellectual, learning, cognitive, emotional or medical conditions.

The **'race ground'** - Discrimination on the 'race ground' occurs where there is less favourable treatment of one person compared to another person because one person is of different race, colour, nationality or ethnic or national origins than the other person.

The **'Traveller community ground'** - Discrimination on the 'Traveller community ground' occurs where one person is treated less favourably than another because one is a member of the Traveller community and the other is not.

'Member of the Traveller community' means a member of a community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.

The **'housing assistance ground'** - Discrimination on the 'housing assistance ground' occurs where there is less favourable treatment of one person compared to another in the provision of accommodation, because one person is in receipt of rent supplement, housing assistance or any social welfare payment and the other is not.

Protection from discrimination on the 'housing assistance' ground applies to accommodation only and does not extend to the provision of goods and services, educational establishments or clubs under the Acts.

The **'victimisation ground'** - Discrimination on the 'victimisation ground' occurs where there is less favourable treatment of one person compared to another because one person has sought redress, attended as a witness, opposed an unlawful act under the Acts, or given notice of an intention to take any of these actions and the other person has not.

TYPES OF DISCRIMINATION

Different types of discrimination are prohibited under the Acts, these include:

Direct discrimination

This is defined as the treatment of a person in a less favourable way than another person who is in a comparable situation, because they differ on any of the nine grounds described above. This is a difference which:

- exists;
- existed but no longer exists;
- may exist in the future; or
- is imputed to the person concerned (this occurs where a person is labelled as differing under the specified grounds even though this is not the case).

Discrimination by association

This occurs when a person who associates with another person is treated less favourably because that other person differs under any of the specified grounds.

Indirect discrimination

This happens where an apparently neutral provision, criterion or practice which appears unproblematic at first sight, puts a person who differs under any of the specified grounds at a particular disadvantage, compared with another person.

This provision, criterion or practice will not amount to discrimination where it is demonstrated that:

1. the provision, criterion or practice is objectively justified by a legitimate aim; and
2. the means of achieving that aim are appropriate; and
3. the means of achieving that aim are necessary.

Procuring discrimination

It is an offence under the Acts to procure or attempt to procure another person to engage in discrimination, harassment or sexual harassment.

SEXUAL HARASSMENT AND HARASSMENT

Sexual harassment and harassment in the provision of goods and services, accommodation and educational establishments is prohibited.

A person ('the harasser') shall not harass or sexually harass another person ('the victim') in any of the following circumstances:

1. the victim uses or seeks to use goods or services provided by the harasser;
2. the victim obtains, or proposes to obtain, accommodation or related services from the harasser;
3. the victim is a student at, or has applied for admission to, or seeks to avail of any services offered by an educational establishment at which the harasser is in a position of authority.

What is harassment and sexual harassment?

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

Sexual harassment is any form of unwanted verbal, nonverbal 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, emails and social media, text messages, pictures, or 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.

Who is a responsible person?

A person who is responsible for the operation of any place that is an educational institution or where goods, facilities or services are offered to the public or a person who provides accommodation is defined as a 'responsible person'.

The 'responsible person' must ensure that any person who has a right to be there, is not sexually harassed or harassed.

It shall be a defence for the responsible person to prove that he or she took steps as are 'reasonably practicable' to prevent the sexual harassment or harassment from occurring.

DISABILITY: REASONABLE ACCOMMODATION

Discrimination on the ground of disability includes a refusal or failure by a service provider to do all that is reasonable to accommodate the needs of a disabled person by providing special treatment or facilities, if without such facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service.

The following service providers must do all that is reasonable to accommodate the needs of a disabled person:

- a person selling goods or providing services;
- a person selling or letting accommodation or providing accommodation;
- educational establishments;
- clubs.

This involves providing special treatment or facilities in circumstances where, without these, it would be impossible or unduly difficult to avail of the goods, services, accommodation etc. However, they are not obliged to provide special facilities or treatment when this costs more than what is called a 'nominal cost'.

What amounts to a 'nominal cost' will depend on the circumstances such as the size and resources of the body involved. If the State provides grants or aids for assisting in providing special treatment or facilities, there may be an onus on the service providers etc. to avail of these grants.

Where a person has a disability that could cause harm to the person or to others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.

POSITIVE ACTION

The Acts allow for taking of positive measures (or preferential treatment) which are legitimately intended to:

- promote equality of opportunity for disadvantaged persons;
- cater for the special needs of persons, or a category of persons who because of their circumstances, may require facilities, arrangements, services or assistance.

In addition, the Acts allow for the imposition of a reasonable preferential fee, charge or rate in respect of anything offered or provided in respect of families, married couples, older or younger persons, or persons with a disability.

VICARIOUS LIABILITY

Employers are liable for discriminatory acts of an employee in the course of his or her employment.

It is not a defence that if the act was done without the employer's knowledge or approval unless they can prove that they took reasonably practicable steps to prevent the conduct.

It is a defence if an employer can show that reasonable practicable steps were taken to prevent the employee from doing the act, or acts of that description.

Anything done by a person as agent for another person, with the authority (whether express or implied) of that other person, shall be treated as if it was done by that other person.

DISCRIMINATORY ADVERTISING

It is prohibited to publish, display, or cause to be published or displayed an advertisement which indicates an intention to discriminate or might reasonably be understood to indicate such an intention.

The Irish Human Rights and Equality Commission has the power to refer a complaint of discriminatory advertising to the Workplace Relations Commission (the 'WRC') for adjudication.

The WRC is the quasi-judicial body established to investigate, mediate, hear and decide claims of discrimination.

Goods and Services

WHAT IS PROHIBITED?

People cannot discriminate (subject to certain exemptions):

- when they are providing goods and services to the public generally or, a section of the public;
- whether these are free or where the goods and services are sold, hired or rented or exchanged; or
- when providing access to and the use of any place or facility.

WHAT IS A SERVICE?

A service is a facility or, service (of any nature) including facilities for:

- banking, insurance, grants, loans, credit or financing;
- entertainment, recreation or refreshment;
- cultural activities;
- transport or travel;
- a service or facility provided by a club (which is available to the public or a section of the public);
- a professional trade or service; and
- public services provided by the State (for example HSE, local authorities, etc.)

This list is not exhaustive. A broad view of what constitutes a service is taken by the Acts.

EXEMPTIONS UNDER THE ACTS IN RELATION TO THE PROVISION OF GOODS AND SERVICES

The Acts allow for people to be treated differently in certain circumstances.

Exemptions on the 'gender ground'

Aesthetic/cosmetic type services

It is not discrimination under the Acts to treat a person differently on the gender ground when providing aesthetic, cosmetic, or similar services which require physical contact between provider and recipient.

Embarrassment or privacy

It is not discrimination under the Acts where a person is treated differently to another person on the gender ground where embarrassment, or breach of privacy could reasonably be expected to happen on account of the presence of a person of another gender.

Exemption on the 'religion ground'

The Acts allow for the provision of goods and services for religious purposes.

Exemption on the 'age ground'

The Acts allow for age requirements for a person to be an adoptive or foster parent. However, the age requirement must be reasonable having regard to the needs of the child or children concerned.

Exemptions on multiple grounds

Sporting events

Difference in treatment on the gender, age or disability grounds or based on nationality in relation to providing or organising sporting facilities or events is permitted if:

- the differences are reasonably necessary having regard to the nature of the facility or event; and
- are relevant to the purpose of the facility or event.

Drama and entertainment

Difference in treatment on the gender, age, disability or race grounds in connection with a dramatic performance, or other entertainment is permitted if the difference is reasonably required for reasons of authenticity, aesthetics, tradition, or custom.

Exemptions on all grounds except for the gender ground

Difference in treatment on any of the grounds, except for the gender ground, in relation to the provision of annuities, pensions, insurance policies or any other matters related to the assessment of risk, is permitted if the difference in treatment is effected by reference to:

- actuarial or statistical data, or other relevant underwriting or commercial factors; and
- is reasonable having regard to the data, or other relevant factors.

Exemptions on all grounds

Wills/gifts

The Acts do not apply to the disposal of goods by will or by gift.

Specialised need

The Acts permit difference in treatment where the goods or service could reasonably be regarded as being suitable only to the needs of certain persons.

Accommodation

WHAT IS PROHIBITED?

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

- disposing of any estate;
- terminating a tenancy;
- providing accommodation, or any accommodation related services or amenities; or
- ceasing to provide accommodation.

The premises or accommodation must be available to the public generally, or a section of the public.

EXEMPTIONS UNDER THE ACTS IN RELATION TO ACCOMMODATION

The Acts allow for people to be treated differently in certain circumstances:

Exemption under the gender ground

It is not discrimination under the Acts for accommodation to be provided to persons of one gender where embarrassment or infringement of privacy can reasonably be expected to result from the presence of a person of another gender.

Exemption under the housing assistance ground

It is not discrimination under the Acts for a landlord to make it a condition of the provision of the accommodation that rent supplement is paid directly to the landlord.

Exemptions on multiple grounds

Housing authorities and the Minister for Justice, in the provision of housing accommodation, can treat people differently based on family size, family status, civil status, disability, age, or membership of the Traveller community.

The Minister for Justice can additionally treat people differently (in the provision of housing accommodation) on the basis of nationality and gender.

Exemptions for particular categories of persons

It is not discrimination under the Acts to reserve any premises or accommodation for the use of persons in a particular category of persons, including for:

- religious purposes;
- refugees;
- nursing homes;
- retirement homes;
- homes for persons with a disability; or
- hostels for homeless persons/or for a similar purpose.

Exemptions on all grounds

Law regulating the provision of accommodation

It is not unlawful to treat persons differently in connection with the provision of accommodation or amenities related to accommodation where the treatment is required by law regulating the provision of accommodation.

Wills/gifts

The Acts do not apply to the disposal of property by will or by gift.

A person's home

The Acts do not apply to situations where a person is renting a room in their home (other than a separate and self-contained part) in circumstances where the provision of the accommodation affects the person's private or family life or that of any other person residing in the home.

Educational Establishments

WHAT IS PROHIBITED?

An educational establishment shall not discriminate in relation to:

- the admission 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 sanction.

WHAT IS AN EDUCATIONAL ESTABLISHMENT?

Educational establishments include pre-school services, primary or post-primary schools, adult, continuing or further education and university or other third level institutions.

They include public and private educational establishments.

EXEMPTIONS UNDER THE ACTS IN RELATION TO EDUCATIONAL ESTABLISHMENTS

Exemption on the gender ground that apply to primary and post-primary schools

Single sex schools are allowed at primary and secondary level.

Exemptions on the religion ground that apply to primary and post-primary schools

Private schools that receive no state support or funding

Primary and post-primary schools that receive no funding or support from the state and which have the objective to provide education in an environment which promotes certain values, can admit persons of a particular religious denomination in preference to another.

Minority religions

A minority religion is a religion that comprises of less than 10% of the total population.

Primary schools that receive any form of state support or funding cannot admit persons of a particular religious denomination in preference to another.

However, if oversubscription arises, primary schools may, following an application by a student from a minority religion, give priority to that student where the school is satisfied that the student is a member of the minority religion and the school

provides a programme of religious instruction/education which is the same, or similar, to the minority religion concerned.

Primary or post-primary refusal based on religious ethos

Primary and post-primary schools, which have the objective to provide education in an environment which promotes certain religious values, can only refuse a student who is not of a particular religious denomination if the school can prove that the refusal is essential to maintain the ethos of the school.

Exemption on the age ground that applies to universities, third or higher level or adult education

The Acts permit universities and other higher level institutions to treat mature students differently in the allocation of places.

Exemptions on the race (nationality) ground that apply to universities, third or higher level or adult education

Admission fees, attendance and allocation of places

The Acts allow for universities and other higher level institutions to treat Irish citizens and EEA nationals differently compared to persons who are not Irish citizens or EEA nationals in relation to admissions fees, attendance, and allocation of places.

Criteria for accessing grants

The Acts allow for the Minister for Education and Science to treat Irish citizens and EEA nationals differently compared to persons who are not, in relation to accessing education grants to assist persons who wish to attend universities, third level institutions and other adult education.

General exemptions relating to universities, third level or adult educational institutions

Scholarships and other assistance

The Acts allow for universities, or higher level institutions to offer assistance to particular categories of persons, by way of sponsorships, scholarships, bursaries or other awards which are justifiable, having regard to traditional and historical considerations.

Foreign exchanges

In relation to the allocation of places, universities or other higher-level institutions can select particular students to take part in exchanges with universities outside the jurisdiction.

Exemption on the gender, age or disability grounds

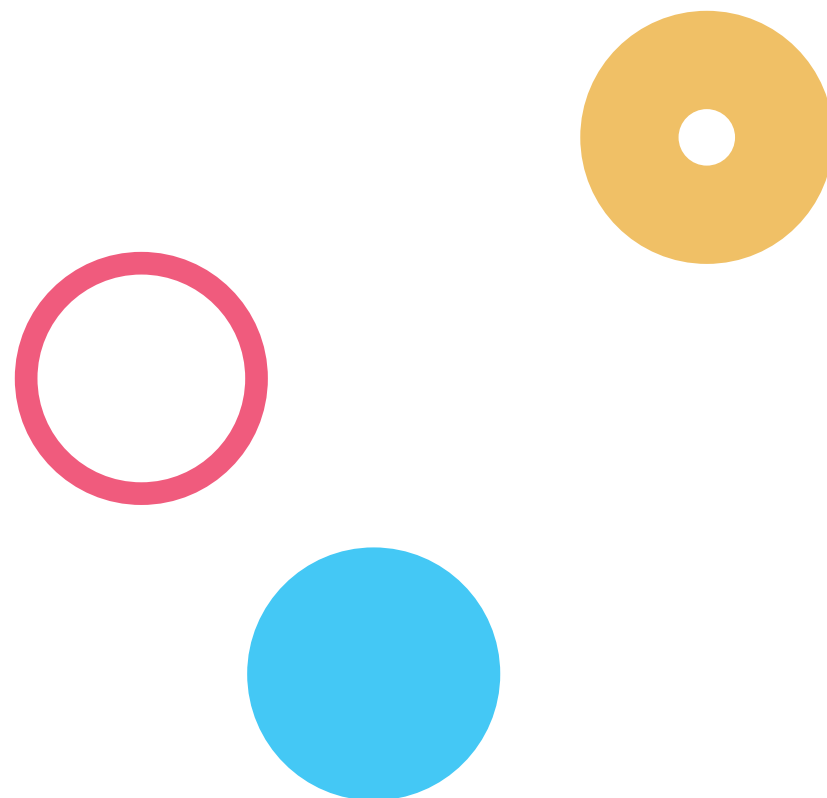
Difference in treatment on the gender, age, or disability grounds in relation to the provision or organisation of sporting facilities or sporting events is permitted to the extent that the differences are reasonably necessary having regard to the nature of the facilities or events.

Exemption on gender and religion grounds

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

Exemption on the disability ground

Difference in treatment on the disability ground is permitted to the extent that compliance with any of its provisions in relation to a student with a disability would, by virtue of the disability, make it impossible, or have a seriously detrimental effect on, the provision by an educational establishment of its services to other students.



Discriminating Clubs

WHAT IS A DISCRIMINATING CLUB?

The specific provisions relating to clubs refer to bodies that have applied for, or hold a certificate of registration under, the Registration of Clubs Act 1904 to 2008. This registration allows clubs to sell alcohol to members and certain visitors. Unlike the provisions in relation to goods and services, the Acts do not ban discrimination outright.

Clubs that do not have a license to sell alcohol are only subject to the Acts insofar as they provide goods and services to the public or to a section of the public, and not just to members.

In general, a club will be treated to be a discriminating club in either of the following situations:

1. if it has a rule, policy or practice which discriminates against a member or applicant on any of the discriminatory grounds; or
2. if a person involved in its management discriminates against a member or applicant in relation to the affairs of the club. This includes issues of admission, terms and conditions of membership, terminating membership and making reasonable accommodation for members with disabilities (subject to the nominal cost exemption).

WHAT IS ALLOWED?

Under the Acts, it is not discrimination if a club:

- (a) is for a particular group of people (for example, a specific group under any of the grounds) and it refuses membership to other persons.
- (b) confines benefit or privileges on the age and gender ground where it is not practicable for those outside the category to enjoy the benefit or privilege at the same time as members within the category. The clubs must make arrangements to offer the same, or a reasonably equivalent, benefit or privilege to those members outside the category.
- (c) has different types of membership, access to which is not based on any of the specified discriminatory grounds.
- (d) seeks to eliminate past discrimination by offering particular concessionary rates, fees or membership arrangements etc., or takes other steps for the principal purpose of obtaining a more equal involvement in club matters to persons who were disadvantaged by an past discriminatory rule or practice of persons who are members of a particular category.
- (e) provides reasonably necessary different treatment to members of a particular gender, age, disability, nationality or national origin as regards sporting facilities or events.

ENFORCEMENT: DISCRIMINATORY CLUBS

Any person, including the Irish Human Rights and Equality Commission, can apply to the District Court for a declaration that a club is a discriminating club. The WRC does not make decisions on claims about discriminatory clubs.

If it is found to be a discriminating club and it is the first such order made against the club, the District Court can suspend a club's certificate to sell alcohol for a period of up to 30 days. The effect of the suspension is that the club cannot sell alcoholic drinks. While a second or subsequent determination that a club is a discriminating club remains in effect, no certificate of registration shall be granted or renewed.

The Acts provide for an appeal to the Circuit Court and a club can apply to the District Court for a declaration as to whether it remains a discriminating club.

Actions taken to the District Court may involve costs.

Licensed Premises

LICENSED PREMISES

Claims of discrimination that occur "on or, at the point of entry" to a licensed premises (for example, a pub, or restaurant; or any place that holds a license to sell alcohol) are dealt with in the District Court and not the WRC). The main relevant provisions are contained in the Intoxicating Liquor Act 2003, as amended.

However, if the claim of discrimination against a licensed premises occurs via a telephone call or by email (in other words if the claimed discrimination does not occur "on or, at the point of entry" to that premises), then any such claim should be directed to the WRC and not the District Court.

Exemptions

EXEMPTIONS

There are several significant exemptions in the Acts that apply to the provision of goods and services, accommodation, educational establishments and clubs.

These exemptions should be read restrictively and should not be allowed to restrict unduly the general prohibition on discrimination.

Action required by or under law

A general exemption provides that nothing in the Acts shall prohibit the taking of any action that is required under:

- (a) statutory provision or court order;
- (b) any act done or measure adopted by the EU; or
- (c) any international treaty which imposes an obligation on the State.

Only actions that are mandatory are covered. Where the measure leaves some discretion the anti-discrimination provisions do apply.

Certain nationals of other countries

Public authorities can treat certain nationals of other countries 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.

Risk of criminal or disorderly conduct

A provider of goods or services, or a person providing accommodation or related services, can refuse a service or accommodation to a person if a reasonable individual, having the knowledge and experience of the provider, would form the belief that the provision of service or accommodation to the customer would produce a substantial risk of criminal or disorderly conduct or behaviour, or damage to property in or around the area where the service or accommodation is provided.

Clinical judgment

Treating a person differently does not constitute discrimination where a person is treated differently solely in the exercise of a clinical judgement in connection with a diagnosis of illness or their medical treatment.

Capacity to enter into a contract

Treating a person differently does not constitute discrimination if a person is incapable of entering into an enforceable contract, or is incapable of giving informed consent, and for that reason the treatment is reasonable.

Making a Claim

MAKING A CLAIM

If you think you have been discriminated against under the Equal Status Acts, both the Work Place Relations Commission (WRC) and the courts (on appeal) have roles in relation to making claims under the Acts.

All claims (except claims in relation to discriminating clubs or claims under the Intoxicating Liquor Act) must be referred in the first instance to the WRC.

Claims concerning discriminating clubs and claims of discrimination made under the Intoxicating Liquor Act must be made in the District Court in the first instance, and the WRC does not have jurisdiction to investigate these types of claims.

Set out in the follow sections are the steps involved in making a claim to the WRC. For more detailed information on the claims process, contact the WRC Information and Customer Service Line Lo-call : **1890 80 80 90**. T: **059 9178990**.



Step 1: Written notification

First of all, you (the complainant) must write to the person you are 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 form can be downloaded from the WRC's website (**www.workplacerelations.ie**). When you get Form ES1, you will also get Form ES2. Form ES2 is filled out by the person you are 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 are complaining about. This written notification must set out the nature of the allegation and your intention, if you are not satisfied with the response, to seek redress under the Acts.

The WRC may "for reasonable cause" direct that the two month period be extended to four months. In exceptional circumstances, the WRC may waive the two month requirement completely where it is satisfied that it is fair and reasonable to do so.

You cannot make a claim to the WRC without taking this step.

It is advisable to get a certificate of posting from the post office to prove postage and also to keep a copy of the written notification for your records.



Step 2: Making a claim

If there is no reply within one month, or if the reply is unsatisfactory, the complaint should be referred to the WRC within six months from the date of the discrimination. The six months' time frame can be extended to twelve months by the WRC for "reasonable cause".



Step 3: At the WRC

Mediation

The Director of the WRC can, at any stage with the consent of both parties, appoint a mediation officer. If a settlement is reached through mediation then the terms are legally enforceable.

Adjudication

If either party objects to mediation, or if the process of mediation is unsuccessful, the case will be referred to an adjudication officer of the WRC for investigation and decision.

If the mediation process is unsuccessful, the mediation officer will issue a notice of non-resolution to both parties. If the complainant wishes to proceed to adjudication, the complainant must write within 42 days from the date of this notice to the WRC applying for the resumption of the hearing.

The adjudication may be based on the written evidence of both parties or may involve an oral hearing. The adjudication officer will issue a decision which is legally binding.

Decisions of adjudication officers will be published on the WRC website and parties are generally named. However, a complainant can make an application at the time of the hearing that parties are anonymised. (For example, this might arise where a complainant has a specific medical condition that they do not want to be made public.) However, the decision to anonymise parties lies at the discretion of the adjudicating officer in a particular complaint.

Dismissal of a claim

Cases can be struck out after a year if the WRC decides they are not being pursued.

The WRC may dismiss a claim at any stage if of the opinion that:

- it has been made in bad faith;
- is frivolous or vexatious;
- misconceived; or
- relates to a trivial matter.

Representation and costs

Complainants may represent themselves, or be represented by a lawyer, trade union, community group or other representative.

In general, costs are not awarded. Costs in respect of travelling and other expenses (except expenses of representatives) can be awarded where a person obstructs or impedes the investigation or appeal.

Remedies

If there is a finding in favour of the person making a complaint, compensation of up to €15,000 in total can be ordered. The adjudication officer can also order persons to take specified courses of action.

Appeals

Decisions of the WRC (including decisions on time limits and striking out of the claim) may be appealed to the Circuit Court not later than 42 days from the date of the decision.

Enforcement

Mediation agreements or decisions of the WRC which have not been complied with may be enforced through the District Court.

Appeal on a point of law

Where a decision is made by the Circuit Court on an appeal, either party may appeal to the High Court on a point of law.

The Irish Human Rights and Equality Commission

THE IRISH HUMAN RIGHTS AND EQUALITY COMMISSION

The Irish Human Rights and Equality Commission ('IHREC') has a statutory mandate to promote and protect human rights and equality and to work towards the elimination of human rights abuses, discrimination and prohibited conduct.

Your Rights

IHREC can provide information on your rights and the remedies available to you under equality and human rights law in Ireland. This includes information on:

- The Employment Equality Acts 1998-2015
- The Equal Status Acts 2000-2018
- Human rights protections under Irish law
- The Intoxicating Liquor Acts, 2003-2008
- EU Free-movement of workers' rights

Information is available on our website at www.ihrec.ie.

Other booklets available in this series include:

The Employment Equality Acts 1998-2015: A Guide to Your Rights if You Are Discriminated Against in the Workplace or in the Course of Employment

Legal Assistance

IHREC may provide legal assistance to members of the public in connection with certain legal proceedings.

The legal proceedings must relate to discrimination under the equality enactments or to human rights law that has been given force under Irish law.

Before IHREC decides on whether it can grant legal assistance it must consider:

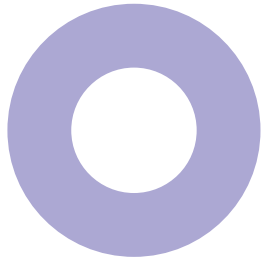
- whether legal assistance could be obtained by another means, including under the civil legal aid or criminal legal aid scheme; and
- whether the power to award redress or grant relief stands vested in any tribunal or other person, for example another statutory body.

Even if an applicant meets the above criteria, IHREC will only provide legal assistance where certain additional statutory criteria are met, including for example whether the proceedings raise a question of principle or where IHREC deems it unreasonable to expect the person to deal with the matter without IHREC's assistance because of its complexity.

IHREC will also consider the availability of funding and other resource implications when deciding whether or not it can grant legal assistance in any particular case.

IHREC has adopted Guidelines for Applications for Legal Assistance available online at www.ihrec.ie. These Guidelines provide additional information on IHREC's legal assistance function and the process applied.

If IHREC does not grant or is unable to offer legal assistance, this does not disqualify the person from taking a case on their own behalf directly to the WRC. A complainant may represent themselves or be represented by a lawyer, trade union or other representative.



The Irish Human Rights and
Equality Commission
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